TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 542

FRANK TOWNSEND, PETITIONER,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED AUGUST 1, 1947.

CERTIORARI GRANTED JANUARY 19, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 542

FRANK TOWNSEND, PETITIONER,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 4, 1948.

—5152

[fols. 1-2]

IN THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

Miscellaneous Docket No. 8

No. 469

COMMONWEALTH OF PENNSYLVANIA ex rel. FRANK TOWNSEND

vs.

C. J. BURKE, Warden, Eastern State Penitentiary, Philadelphia, Pennsylvania

DOCKET ENTRIES

May 15, 1947. Petition for a writ of habeas corpus filed. Frank Townsend.

May 16, 1947. Rule to show cause granted, returnable May 23, 1947; answers to be filed by the Warden and the District Attorney. The Clerk shall certify to this court the record including the notes of testimony. Relator need not be produced on the return day.

STEARNE, J.:

May 20, 1947. Acceptance of service of rule by the District Attorney filed.

May 21, 1947. Acceptance of service of rule by the Warden filed.

May 21, 1947. Warden's answer filed.

May 22, 1947. District Attorney's Answer with Bills Nos. 696 to 701 May Sessions, 1946; No. 300 April Sessions 1945 and 691 May Sessions 1945, filed.

Rule discharged. 5-26-47.

Per Curiam (endorsed on the petition).

May 27, 1947. Record exit and sent to District Attorney, Philadelphia County.

[fol. 3] January 23, 1948, the following order received from the Clerk of the Supreme Court of the United States:

"On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of cer-

tiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is ordered transferred to the appellate docket.

January 19, 1948

January 30, 1948. Record received from the District Attorney, Philadelphia County.

[fol. 4] IN THE SUPREME COURT OF PENNSYLVANIA

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed May 15, 1947

To the Honorable, The Justices of the Said Court:

Now to wit this 12th day of May A. D. 1947, comes Frank Townsend, your petitioner who prays your Honorable Court to issue a writ of Habeas Corpus based on the following facts which he your petitioner here respectfully presents:

1. That C. J. Burke is the duly appointed Warden of the Eastern State Penitentiary, 21st Street and Fairmount Avenue, Philadelphia, Pennsylvania.

2. That your petitioner is incarcerated in the Eastern State Penitentiary and has been undergoing imprisonment therein since June 5, 1945.

3. That Warden C. J. Burke currently holds your petitioner in custody on commitment of not less than 10 years and not more than 20 years covering Bill of Indictment #698, May sessions, 1945, charging Being Armed with Offensive Weapon with Intent to Rob, etc.

4. That this sentence of not less than 10 years nor more than 20 years covering Bill #698, May sessions, 1945, was imposed by the Honorable Harry S. McDevitt, Judge, sitting in the Court of Quarter Sessions of Philadelphia County, on June 5, 1945, at approximately 3:00 p. m.

5. That your petitioner was arrested at approximately 7:15 p. m. on June 3, 1945, at 21st and Wallace Streets,

Philadelphia, Pennsylvania, by officials of the Philadelphia [fol. 5] Police Department; that he was immediately taken to the 9th District Police Station at 20th and Buttonwood Streets, Philadelphia, Pennsylvania, and there held for a period of approximately one hour; that he was then taken to the 19 District Police Station at 12th and Pine Streets, Philadelphia, Pennsylvania, and there held for questioning for another hour; that he was then transported by police van to the 34th District Police Station at 15th Street and Snyder Avenue, Philadelphia, Pennsylvania, and there held until approximately 5:00 p. m., of June 4, 1945, when he was taken to the Fingerprinting Bureau in City Hall, and then immediately returned to the 34th District Police Station; that he was confined continuously and deprived of his right to contact anyone until approximately 2:00 a. m. of the morning of June 5, 1945, when he was allowed to see his wife and speak with her for a period not exceeding ten (10) minutes that seven (7) hours following the ten (10) minute interview with his wife, at approximately 9:00 a. m. the Morning of June 5, 1945, he was taken to City Hall and placed in the Sheriff's cell room and shortly thereafter produced in Court and placed on trial. That, in brief, your petitioner was arrested, placed on trial, sentenced and delivered to the Eastern State Penitentiary all within a period of *less than* forty-eight (48) hours.

6. That your petitioner was never given a hearing before a City Magistrate and formally charged with the crimes referred to in Bills #696, 698, 699, and 701, May sessions, 1945.

7. That when he was arraigned in Court he was not advised of his right to engage counsel, nor was he instructed of the particular offenses covering Bills #696, 698, 699, and 701, May sessions, 1945.

8. That when sentence was imposed on Bill #698, it covered these three mentioned other bills, namely, Bills #696, 699, and 701, May sessions, 1945.

9. That from the very minute of his arrest to the very [fol. 6] minute of the imposition of sentence, at no time was your petitioner instructed to even the simplest and minutest degree of his constitutional rights provided under the 6th and the 14th Amendments of the Constitution of United States.

10. That in Commonwealth ex rel. Shultz vs. Smith, Superior 206, 43, Miscellaneous Docket No. 5, citing Judge Keller's words as he extracted them from Com. v. Jester, 256 Pa. 441, 100 A. 993 . . .

". . . Section 9 of Article I, of the Constitution of Pennsylvania provides that 'In all Criminal prosecutions the accused hath a right to be heard by himself and his counsel,' and 'to have compulsory process for obtaining witnesses in his favor'. Considering the serious nature of the charge against defendant, the short time intervening between his arrest and trial, and the absence of an opportunity to properly prepare and present a defense and procure the attendance of witness, if he had any, it cannot be said he was accorded the right to be heard by himself and counsel, in accordance with his constitutional rights. When defendant was brought from the county jail to the court room, two days after a true bill had been found against him, neither he, nor his counsel, had notice or knowledge, that he would be placed on trial on that day. . . ."

11. Your petitioner cites further extracts from the case herein mentioned, namely, Shultz v. Smith, as follows:

". . . We follow this case in Comm. v. Richards, 11 Pa. Superior Court, 124, 129, 169 A. 464, and after citing extracts from the opinion of the court in Comm. v. Jester, supra, and from the Opinion of Mr. Justice Sutherland in Powell v. Alabama, 287 U. S. 45, which contained a reference to Hendryz v. State, 130 Ind. 265, 268, 269, 29 N.E. 1131 we said: 'The right to be represented by counsel is a fundamental right, going to the very basis of the administration of the criminal law, and places on the trial judge the onus to inform the defendant of his rights and to assist him in obtaining the benefits of those rights. The failure of the court to inform him of his rights amounts to a denial of the right. . . . The failure of the court to so inform him or to appoint counsel for him was fundamental error.'."

12. Your petitioner cit-s still further from the same case herein mentioned, namely, Shultz v. Smith, as follows:

". . . A court's jurisdiction at the beginning of trial may be lost 'in the course of the proceedings' due

to failure to complete the court—as the Sixth Amendment requires—by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose [fol. 7] life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus. A judge of the United States—to whom a petition for habeas corpus is addressed—should be alert to examine 'the facts for himself when if true as alleged they make the trial absolutely void.' . . .

". . . So here, the denial of counsel to one accused of such grave crimes as were involved in this case, is not only a denial of a constitutional right, but is a basic and fundamental error striking at the fairness and justice of the whole trial, which cannot always or even generally be reached in like circumstances by allowing him the right to appeal from the judgment, for how is the accused who has been deprived of counsel to know whether the trial was conducted fairly and with due regard to his legal rights, whether error was committed in the admission or rejection of evidence, whether the charge of the court was fair, and accurately and justly presented the case to the jury, or any of the matters ordinarily correctable by appeal and so vividly portrayed in the above quotation from the opinion in Powell v. Alabama, supra, cited in Johnson v. Zerbst, supra, pp. 462, 463? To deprive one accused of a grave crime of his constitutional right to be represented by counsel, and then hold that this basic and fundamental error cannot be taken advantage of except by an appeal from the judgment, to be taken within forty-five days by a prisoner who is not aware of his rights, is not versed in the law, has not attorney and no means to procure one, would be an injustice which our law does not sanction. Such a basic and fundamental error, which affects the justice and regularity of the whole trial, may be relieved against in this Commonwealth by writ of habeas corpus. . . ."

13. That your petitioner was at a disadvantage without the assistance of counsel is evidenced by the fact that one of the defendants with whom your petitioner was tried had an attorney and, in turn, received a much lighter sentence than the one your petitioner received.

14. Your petitioner holds and contends that the trial court committed a grave injustice in denying him the protection of the 6th and the 14th Amendments of the Federal Constitution; and that, going further, to put a citizen on trial in a court of law without the protection of these two basic and fundamental rights is too destructive of justice to be correctable by ordering that the abused party should be [fol. 8] remanded for a new trial, when the abused person has partly satisfied the sentence given at said trial.

15. Your petitioner is without remedy except by Writ to your Honorable Court..

Wherefore, your petitioner who is now confined in the Eastern State Penitentiary, having been deprived of his constitutional right to be heard by counsel at time of trial and having been without knowledge of this right at time of trial and having not been advised or instructed of this right at time of trial, prays your Honorable Court to issue a writ of Habeas Corpus directed to C. J. Burke, the Warden of Eastern State Penitentiary, Philadelphia, Pennsylvania, releasing your petitioner from further bondage on indictments and commitment covering Bills #698, 696, 699, and 701, May sessions, 1945.

And he will ever pray,

Frank Townsend, Petitioner.

[fols. 9-10] *Duly sworn to by Frank Townsend. Jurat omitted in printing.*

[fol. 11] IN THE SUPREME COURT OF PENNSYLVANIA

[Title omitted]

CERTIFICATE OF RULE—Filed May 20, 1947

May 15, 1947, Petition for writ of habeas corpus filed. Frank Townsend.

May 16, 1947, Rule to show cause granted, returnable May 23, 1947; answers to be filed by the Warden and the

District Attorney. The Clerk shall certify to this Court the record including the notes of testimony. Relator need not be produced on the return day.

Stearne, J.

Clerk's Certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fols. 12-13] [Endorsed:] 5/17/47. Service Accepted. John H. Maurer, District Attorney; Franklin E. Barr, First Asst. District Attorney.

[fol. 14] Service hereby accepted: C. J. Burke, Warden.

[fol. 15] IN SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

ANSWER OF C. J. BURKE, WARDEN EASTERN STATE PENITENTIARY—Filed May 21, 1947

To the Honorable, the Judges of the Supreme Court:

C. J. Burke, Warden, Eastern State Penitentiary, Philadelphia, Penna. respectfully represents:

That, petitioner was sentenced from Philadelphia County, Pennsylvania by the Honorable Harry S. McDevitt after pleading guilty to a sur charge of Assault, Being Armed to Rob to a term of ten (10) to twenty (20) years from June 5, 1945 on Bill #698 May 1945 Term of Court.

That, petitioner was further sentenced from Philadelphia County, Pennsylvania by the Honorable James Gay Gordon, Jr. after pleading guilty to a sur charge of attempted Burglary to a term of one (1) month to five (5) years after sentence on Bill #698 May 1945 Term of Court, on Bill #300 Apr 1945 Term of Court.

That, petitioner was still further sentenced from Philadelphia County, Pennsylvania by the Honorable James Gay Gordon, Jr. after pleading guilty to a sur charge of Carrying Concealed Deadly Weapon; Unlawfully carrying fire-

arm without a license to a term of one (1) month after sentence on Bill #300 April 1945 Term of Court, on Bill #691 May 1945 Term of Court.

That, the questions raised in the petition are one of law, of which your relator has no knowledge and therefore makes no answer.

Respectfully, C. J. Burke, Warden.

[fol. 16] *Duly sworn to by C. J. Burke; jurat omitted in printing.*

[File endorsement omitted.]

[fol. 17] EXHIBITS TO ANSWER

Hon. Harry S. McDevitt

COURT OF OYER AND TERMINER, GENERAL JAIL DELIVERY, AND QUARTER SESSIONS OF THE PEACE, FOR THE CITY AND COUNTY OF PHILADELPHIA, MAY TERM, 1945

No. 698

THE COMMONWEALTH OF PENNSYLVANIA

vs.

FRANK TOWNSEND

Sur Charge of Assault, Being Armed to Rob—Defendant Pleaded Guilty

I Certify, That on the 5 day of June A. D. 1945 the above-named defendant is adjudged by the Court to pay a fine of —— to the Commonwealth, undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania for a period of not less than Ten Years nor more than Twenty Years From 6-5-45 to be there fed, clothed, and in all respects treated as the law directs; that he pay the costs of prosecution, and stand committed until judgment be fully complied with.

In Witness Whereof, I have hereunto set my hand and the Seal of said Court, this 5 day of June, A. D. 1945.

S. W. Dolfman, Pro Clerk.

[fol. 18] COURT OF OYER AND TERMINER, GENERAL JAIL DELIVERY, AND QUARTER SESSIONS OF THE PEACE, FOR THE CITY AND COUNTY OF PHILADELPHIA, APRIL TERM, 1945

Hon. James Gay Gordon, Jr.

No. 300

THE COMMONWEALTH OF PENNSYLVANIA

vs.

FRANK TOWNSEND

Sur Charge of Attempted Burglary—Defendant Pleaded Guilty

I Certify, That on the 24th day of October, A. D. 1945 the above-named defendant is adjudged by the Court to pay a fine of One Dollar to the Commonwealth, undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania for a period of not less than one (1) Month nor more than Five (5) Years after sentence on Bill #698, May, 1945, to be there fed, clothed, and in all respects treated as the law directs; that he pay the costs of prosecution, and stand committed until judgment be fully complied with.

In Witness Whereof, I have hereunto set my hand and the Seal of said Court, this 24th day of October, A. D. 1945.

Horace W. Jelley, Pro Clerk.

[fol. 19-20] COURT OF OYER AND TERMINER, GENERAL JAIL DELIVERY, AND QUARTER SESSIONS OF THE PEACE, FOR THE CITY AND COUNTY OF PHILADELPHIA, MAY TERM, 1945

Hon. James Gay Gordon, Jr.

No. 691

THE COMMONWEALTH OF PENNSYLVANIA

vs.

FRANK TOWNSEND

Sur Charge of Carrying Concealed Deadly Weapon. Unlawfully Carrying Firearm Without a License—Defendant Pleaded Guilty

I Certify, That on the 24th day of October, A. D. 1945 the above-named defendant is adjudged by the Court to pay a fine of One Dollar to the Commonwealth, undergo imprisonment in separate or solitary confinement at labor, in the State Penitentiary for the Eastern District of Pennsylvania for a period of not less than One (1) Month after sentence on Bill #300, April, 1945, nor more than —— to be there fed, clothed, and in all respects treated as the law directs; that he pay the costs of prosecution, and stand committed until judgment be fully complied with.

In Witness Whereof, I have hereunto set my hand and the Seal of said Court, this 24th day of October, A. D. 1945.

Horace W. Jelley, Pro Clerk.

[fol. 21] IN THE SUPREME COURT OF PENNSYLVANIA

[Title omitted]

ANSWER OF THE DISTRICT ATTORNEY—Filed May 22, 1947

To the Honorable, the Justices of the said Court:

The answer of John H. Maurer, District Attorney of Philadelphia County, respectfully represents:

The relator was charged, with other defendants, on three bills of indictment with assault with weapons with intent to rob, Nos. 696, 697 and 698 of May Sessions 1945, and in Bills Nos. 699, 700 and 701 with burglary with intent to com-

mit a felony, to wit: robbery. He plead guilty to Bills 696, 698, 699 and 701 and was acquitted on Bills 697 and 700. On these bills he was indicted as a fugitive and consequently did not have a hearing before a magistrate.

He was sentenced on only one of the four bills, to wit: 698, to ten to twenty years in the Eastern State Penitentiary to be computed from June 5, 1945, the date when he was arrested. This sentence was imposed by Judge McDevitt.

He was also indicted on Bill No. 300, April Sessions, 1945, with one Edward Keenan, on the charge of attempted burglary. The defendants plead not guilty, and later, on October 24, 1945, changed their pleas to guilty. The relator, [fol. 22] Townsend, was sentenced to not less than one month nor more than five years at the expiration of his sentence on Bill No. 698 of May Sessions, 1945.

The relator was also indicted on Bill No. 691 of May Sessions, 1945, charged with carrying concealed deadly weapon, to wit: a revolver, to which, after originally pleading not guilty, he changed his plea to guilty on October 24, 1945, and was sentenced to one month after expiration of sentence on Bill No. 300 of April Sessions, 1945; the last two sentences being imposed by Judge Gordon.

The relator plead guilty to all bills of indictment on which he was sentenced. It has been many times held that on a plea of guilty there is no requirement that counsel be assigned. The requirement that counsel be assigned applies only to cases of murder in the Commonwealth of Pennsylvania.

A copy of the relator's criminal record is attached hereto and made part hereof, which shows that he has been guilty of larceny, breaking and entering, burglary and holdup since September of 1930.

WHEREFORE your respondent prays that the petition be dismissed.

John H. Maurer, District Attorney, by Franklin E. Barr, First Assistant District Attorney.

[fol. 23] *Duly sworn to by Franklin E. Barr. Jurat omitted in printing.*

[File endorsement omitted.]

[fols. 24-27] EXHIBIT TO ANSWER

Department of Public Safety

Bureau of Police

Philadelphia

Prisoner's Criminal Record

Name: Frank Townsend. White—Residence—1732 Wylie St. Age: 29 in 1945.

Alias: Randolph W. Cain, Frank S. Townsend.

Name of Complainant and Address ——.

Name and Number of Officer making arrest ——.

Number of Photograph: 108485.

Criminal Vocation ——.

Criminal Record (as far as known) ——.

9-23-30 Larceny—Sent to House of Detention.

8-18-31 Entering to steal and larceny. $1500 Court Mgst. Coyle—Prisoner stated he was sent to House of Det.—under age.

8- 6-33 Larceny of auto. Pld. nolle cont. adj. not guilty—discharged—Judge James Barnett 8-15-33.

5- 5-34 Larceny—Pld. nolle cont. adj. guilty—1 to 2 yrs. Co. Prison. Judge Raymond MacNeille 5-18-34.

6-14-36 Entering to steal and larceny—Pld. guilty—sent. susp. pay costs. Judge H. A. Davis 6-25-36.

7-14-37 R. S. Goods. Discharged Mgst. Costello.

6- 3-38 Doylestown, Pa. Ent. to steal and larceny. Not guilty discharged. Judge Leopold Glass 6-13-38.

4-6-45 Attempt burglary—Pld. guilty—1 month to 5 yrs. after exp. sent. on Bill 698 (arr. 6-4-45). Judge James Gordon, Jr., 10-24-45. Eastern Penty.

6- 4-45 Holdup and robbery—att. safe robbery—burglary and larceny of auto—Viol. Witkin Act C.C.D.W. etc. Indicted 5-1945 Bills 691, 696, 697, 698, 699, 700, 701. Pld. guilty Bills 696, 698, 699 and 701—10 to 20 yrs. East. Penty. Judge Harry McDevitt 6-5-45. 10-24-45 Not guilty bills 698, 700, Judge Gordon. Pld. guilty Bill 691, sent. 1 month to 5 yrs. East. Pen. after exp. sent. on B. 300 of 4-1945.

[fols. 28-30] Clerk's Certificate to foregoing transcript and duplicate certificate omitted in printing.

[fol. 31] IN THE COURT OF QUARTER SESSIONS OF THE PEACE, OF THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

August Sessions, 1933.

COUNTY OF PHILADELPHIA, SS.:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Townsend, late of the said County, minor on the seventh day of August in the year of our Lord, one thousand nine hundred and thirty-three, at the County aforesaid, and within the jurisdiction of this Court, certain property, to wit, one Chevrolet Roadster, of the value of three hundred dollars of the goods and chattels, moneys and property of D. H. Redmond then and there being found, feloniously did steal, take and carry away; contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present That the said Frank Townsend, afterwards to wit: On the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods and chattels, moneys and properties aforesaid by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously stolen, taken and carried away, feloniously, unjustly, and for the sake of wicked gain, did receive and have, the said Frank Townsend then and there well knowing the goods and chattels, moneys and properties last mentioned to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 32] [Endorsed:] No. 498. August Sessions, 1933. Commonwealth vs: Frank Townsend, 1910 Mt. Vernon St. Larceny of Automobile. Receiving Stolen Goods. Aug. 14, 1933. True Bill W. H. MacVaugh, Foreman. 8/15/33.

The Defendant being arraigned, plead Nolo Contendere

and adjudged not guilty. —— ——, Dist. Atty. sim. et issue.

Witnesses: Off. Hunt 3450. Jacobs 3036. 16t dist. D. H. Redmond, 247 S. 46th St.

Bail, $500. C. Campbell, Magistrate.

[fol. 33] IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

August Sessions, 1933.

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Townsend, late of the said County, Minor on the seventh day of August in the year of our Lord one thousand nine hundred and thirty-three, at the County aforesaid, and within the jurisdiction of this Court, did unlawfully make use of and operate a motor-vehicle, to wit, a certain *Cehrolet* Roadster automobile, which was then owned by D. H. Redmond without the knowledge and consent of the said D. H. Redmond, such owner of said automobile as aforesaid:

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 34] [Endorsed:] No. 499. August Sessions, 1933. Commonwealth vs, Frank Townsend, 1910 Mt. Vernon St. Operating, etc., Automobile without consent of Owner. Aug. 14, 1933, True Bill. W. H. MacVaugh, Foreman, 8/15/33.

The Defendant being arraigned, plead Nolo Contendere and adjudged not guilty. ——, Dist. Atty. sim. et issue.

Witnesses: Off. Hunt 3450. Jacobs 3036. 16th dist. D. H. Redmond, 247 S. 46th St. Bail, $500. C. Campbell, Magistrate.

[fol. 35] IN THE COURTS OF OYER AND TERMINER AND QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF PHILADELPHIA, MAY SESSIONS, 1934

No. 431

COMMONWEALTH

vs.

CHARLES TOWNSEND

PETITION OF CERTIFICATE AND ORDER DISCHARGING PETITIONER ON PAROLE

To the Honorable the Judges of the Said Court:

Charles Townsend respectfully represents that upon a bill of indictment charging Larceny he was sentenced on May 18th, 1934, to undergo a term of imprisonment of not less than one year nor more than two years Fr. 5/5/34 in the Philadelphia County Prison, by the Honorable, R. MacNeille, Presiding Judge, Petitioner represents that the minimum sentence will expire on 5th May, 1935, and respectfully prays that he be discharged on parole for the remainder of his sentence, according to provisions of the Act of Assembly in such case made and provided. And he will ever pray etc.

Charles Townsend, Petitioner,

It Is Hereby Certified to the Court that the conduct of Charles Townsend during the term of his imprisonment, has been satisfactory.

—— ——, President of the Board of Inspectors of the Philadelphia County Prison.

Decree

And Now, to wit: This — day of — A. D. —, in consideration of the above petition of certificate, it is ordered that defendant Charles Townsend, be discharged on parole for the remainder of his sentence, in custody of Ezekiel M. Hackney, Probation Officer of these Courts.

—— ——, Judge.

[fol. 36] IN THE COURTS OF OYER AND TERMINER AND QUARTER SESSIONS OF THE PEACE IN AND FOR THE COUNTY OF PHILADELPHIA

Term: May, 1934. Bill: 431. Sur Charge: Larceny

COMMONWEALTH

vs.

FRANK TOWNSEND

PETITION FOR PAROLE BY DIRECTION OF THE COURT—Filed February 14, 1935

To the Honorable the Judges of the Said Court:

The petition of E. M. Hackney, Chief Parole Officer, Quarter Sessions Courts of Philadelphia County respectfully represents:

That the defendant, indicted as above, pleaded Nolo Contendere, and on May 18, 1934 he was sentenced to a term of not less than 1 year nor more than two years in the county prison, to date from May 9, 1934, by Honorable Raymond MacNeille, Presiding Judge.

Your petitioner further represents that the defendant has been arrested on three previous occasions but has never before been sentenced to prison.

Your petitioner further represents that the defendant has now been confined in the said county prison for a period of more than 9 months, he has received a salutary lesson, and in view of the interest of those close to him, including the Big Brothers Association, all of whom assert that they will devote every effort to the end that he will not engage in unlawful conduct again, it is believed that his parole may safely be granted at this time. Copy of investigation and letter of Big Brothers attached hereto.

Your petitioner therefore prays your honorable court that the defendant be discharged on parole in accordance with the provisions of the Act of Assembly in such cases made and provided.

And he will ever pray etc.

E. M. Hackney, Petitioner.

[File endorsement omitted.]

[fol. 37] DECREE

And Now, to wit: This 25th day of February, 1935, after due consideration of the facts set forth in the foregoing petition It Is Ordered And Decreed that the defendant, Frank Townsend be released from the said County Prison and discharged on parole for the remainder of the sentence imposed by the court.

This order is made in accordance with the provisions of the Act of Assembly approved June 19, 1911, amended May 11, 1923.

By the Court, —— ——, Judge.

[fol. 38] EXHIBIT TO PETITION

Member of Welfare Federation

The Big Brother Association

Established 1915

In Merger With Evening Home and Library Ass'n (Established 1886) and Lincoln Educational Institution (Established 1866)

The Boy Center, 25 South Van Pelt Street

Between 21st and 22d Sts., Above Chestnut St.

Philadelphia, February 6, 1935.

Mr. E. M. Hackney, Probation Department, Quarter Sessions Court, City Hall, Phila., Pa.

MY DEAR MR. HACKNEY:

In pursuance of Mr. Teter's conversation with you, I am writing to ask if you will be good enough to prepare a petition, if it meets with your approval, in the case of Frank Townsend, an inmate of the Philadelphia County Prison—#C-2040-1058, who, we feel, from our former experience with him and an investigation, will make good if released.

We recently wrote to Judge MacNeille concerning this young man and sent him a report, of which the enclosed is a copy.

Many thanks for your co-operation.

Sincerely yours, Geo. W. Casey, Secretary.

GWC:S.

[fols. 39-40] This boy was referred to us on 11-3-30 by Judge Brown of Juvenile Court. He was charged with larceny of a coat from an automobile. We were unable to establish a very good contact, and on 12-22-30 he was committed to the Labor Bureau from Juvenile Court for farm placement. On 8-25-31 he was committed to Glen Mills for larceny and referred to us for supervision when paroled.

He is one of seven children all of whom are away from home, with the exception of Raymond. Mother is dead. His father Henry, and stepmother Matilda, live at 1902 Mt. Vernon St.

While under our supervision the boy at first was very sullen and uncooperative. However, when he realized our interest in him was friendly his attitude changed entirely. He became very friendly and responsive. There has always been an unfortunate home condition. The father had very little control over any of the children, and no doubt his harsh treatment and lack of sympathy caused everyone to leave home.

Uu until the time of commitment boy made an unusually fine effort to keep straight and secure work, and it was only following an argument in the home, which resulted in his father putting him out, that he subsequently got into trouble. He went to live with a family by the name of Kane. He became infatuated with the daughter whom he married. It was while unemployed that he met up with his brother Charles, who no doubt influenced him to steal. Charles was previously arrested on 10-8-30 for larceny of groceries from a chain store truck. He was sent to the House of Correction by Judge Lewis.

Both boys were committed on 5-18-34 to the Phila. County Prison for the term of one year charged with larceny of merchandise from in front of a chain store. Since being in the Institution Frank became the father of a baby girl. His wife, who is quite fond of him, is anxious for him to return home. His father-in-law, Mr. Kane, is likewise

interested in having his son-in-law return to his home, and he feels he will be able to secure work for him. Mr. Kane is employed steadily and he is quite willing to support the boy, his wife and baby until such a time as he can get on his own feet. The Big Brother Association would be more than happy to assist the boy in helping him secure work and supervise him, in cooperation with the Parole Department.

Boy has communicated regularly with our office, and there is no doubt that if given an opportunity he would do what is right.

NST:MH.

[fol. 41] IN THE COURT OF QUARTER SESSIONS OF THE PEACE, OF THE COUNTY OF PHILADELPHIA, MAY SESSIONS, 1934

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Frank Townsend, late of the said County, minor, and Charles Townsend alias Randolph Cain, late of the said County, yeoman on the ninth day of May in the year of our Lord one thousand nine hundred thirty-four, at the County aforesaid, and within the jurisdiction of this Court, certain property, to wit, one bushel of potatoes, together of the value of two dollars and seventy-four cents; fifteen pounds of cherries, together of the value of three dollars and sixty-eight cents; one crate of strawberries, of the value of two dollars and forty cents; and twenty-eight pounds of peas, of the value of two dollars and sixty-six cents; altogether of the value of eleven dollars and forty-eight cents of the goods and chattels, moneys and property of a certain body corporate named The Great Atlantic and Pacific Tea Company then and there being found, feloniously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present that the said Frank Townsend and Charles Townsend alias Randolph Cain afterwards to wit: On the same day and year aforesaid, at

the County aforesaid, and within the jurisdiction of this Court, the goods and chattels, moneys and properties aforesaid by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously stolen, taken and carried away, feloniously, unjustly, and for the sake of wicked gain, did receive and have, the said Frank Townsend and Charles Townsend alias Randolph Cain then and there well knowing the goods and chattels, moneys and properties last mentioned to have been feloniously stolen, taken and carried away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 42] Witnesses: Det. Schenk, American Stores Co., 31st & Master; Det. Wm. McDonough, A & P Stores, 32d & Chestnut Sts.; John Bowers, 2154 N. Marston St.; R. W. Whitman, 2366 W. Sedgley Ave. Bail $500 ea C. Campbell, Magistrate.

[Endorsed:] No. 431. May Sessions, 1934. Commonwealth vs. Frank Townsend, 815 N. 17th St., Charles Townsend alias Randolph Cain, 1909 Mt. Vernon St. Larceny—Receiving Stolen Goods. 5-16 1934. True Bill. Charles F. ——, Foreman. 5/18/34. The Defendants being arraigned, plead Nolo Contendere. Verdict, Eo Die. Sentence, One to 2 years each C. P. from Commit. By the Court, ——, J.

[fols. 43-44] In the Court of Oyer and Terminer and Quarter Sessions of the Peace for the County of Philadelphia, June Sessions, 1936

No. 1036

Commonwealth

vs.

Charles A. Robinson, Jr., Frank Townsend, Charles Townsend

Enter my appearance for the above named defendant.

Thomas E. Cogan, Defender.

To Clerk, Q. S. Phila. County.

[fol. 45] IN THE COURT OF QUARTER SESSIONS OF THE PEACE, OF THE COUNTY OF PHILADELPHIA, JUNE SESSIONS, 1936

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, that Charles A. Robinson, Junior, late of the said County, yeoman, Frank Townsend late of the said County, yeoman, and Charles Townsend late of the said County, yeoman, on the thirteenth day of June in the year of our Lord one thousand nine hundred and thirty-six at the County aforesaid, and within the jurisdiction of this Court, feloniously, wilfully and maliciously did enter the building and taproom, there situate of Samuel Kaplan, with an intent, the goods and chattels, moneys and property in the said building and taproom, then and there being found, feloniously to steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present that the said Charles A. Robinson Junior, Frank Townsend and Charles Townsend afterwards, to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, certain property, to wit, seven bottles of whiskey, some part full and some full, altogether, of the value of ten dollars, of the goods and chattels, moneys and property of Samuel Kaplan, then and there being found, then and there feloniously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, that the said Charles A. Robinson, Junior, Frank Townsend and Charles Townsend afterwards, to wit: On the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods and chattels, moneys and properties aforesaid, by some ill-disposed person (to the Jurors aforesaid

yet unknown) then lately before feloniously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have, the said Charles A. Robinson, Junior, Frank Townsend and Charles Townsend, then and there well knowing the goods and chattels, moneys and properties last mentioned, to have been feloniously stolen, taken and carried away: contrary to the form of the Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 46] Witnesses: S. Kaplan, 429 E. Sharpnack St., Off. McKenna #4318, Gormley #1481. 8th Dist. Bail, $1500 ea. C. Coyle, Magistrate.

[Endorsed:] No. 1036. June Sessions, 1936. Commonwealth vs. Charles A. Robinson, Junior, 1521 N. Myrtlewood St., Frank Townsend, 2017 Green St., Charles Townsend, 1909 Mt. Vernon. 1st Count—Entering with intent to steal. 2nd Count—Larceny. 3rd Count—Receiving Stolen Goods. June 23rd, 1936. Jas. Clark, Foreman. 6/25/36. The Defendants being arraigned, plead Guilty. Verdict Eo Die. Sentence, Susp. and defts. discharged to Pay Costs. By the Court, H. H. D., J.

[fol. 47] NOTICE TO WITNESS

Room No. 650, 6th Floor, City Hall

Philadelphia, June 10, 1938.

COMMONWEALTH

vs.

FRANK TOWNSEND et al.,

Sur Charge Larceny etc.

To Wm. Weller, 1742 Germantown Ave.

You are required to appear at the Court of Quarter Sessions of the Peace as a Witness in the above, on Monday

June 13, 1938 Morning, the — inst., at 10 o'clock precisely and without fail. County Court House, Broad and Market Sts.

—— ——, Officer of the Court.

☛ Bring this Notice with you.

Personal Service on Wm. Weller. June 11-38. R. F. ——.

———

[fol. 48] MUNICIPAL COURT OF PHILADELPHIA, CRIMINAL DIVISION, SESSIONS: JUNE, 1938

Number 314

COMMONWEALTH

vs.

RAYMOND TOWNSEND

Sur Charge: Entering to Steal; Larceny; Receiving Stolen Goods

DECREE

And now, to wit: This twenty-first day of June, 1939 after due inquiry it appearing to the Court that one Raymond Townsend was indicted in the Municipal Court Criminal Division in and for the County of Philadelphia as of June Sessions, 1938, No. 314, sur charge: Entering to Steal, Larceny, Receiving Stolen Goods, and being thereupon convicted, was placed on probation for a period of five years by the Honorable Leopold C. Glass on the thirteenth day of June, 1938.

It further appearing to the Court that on the fifteenth day of June, 1939 before the expiration of the said probation, the said Raymond Townsend was sentenced in the Court of Quarter Sessions of Philadelphia County on Bill No. 372, June Sessions, 1939, of the Crime of Attempted Robbery, etc., and pleaded Guilty to Bills of Indictment No. 369, #370, #371, #372, #373, #374, #375, June Sessions, 1939, committed during the aforesaid Probation.

It is now ordered and decreed that the said probation be

and is hereby revoked and the defendant, Raymond Townsend is now sentenced to a term of Not less than 2 years nor more than 4 years in the Eastern State Penitentiary to run concurrently with sentence imposed on Bill of Indictment No. 372, June Sessions, 1939.

Leopold C. Glass, Judge. (Seal.)

[fol. 49] IN THE COURT OF QUARTER SESSIONS OF THE PEACE, COUNTY OF PHILADELPHIA

ORDER FOR APPEARANCE

June Sessions, 1938.

No. 314

COMMONWEALTH

vs.

FRANK & RAYMOND TOWNSEND

To the Clerk of Quarter Sessions Court:

Enter my appearance for Defendant in the above entitled case.

Charles W. Sweeney, Attorney for Defendant, 2518 Lewis Tower.

[fol. 50] IN THE COURT OF QUARTER SESSIONS OF THE PEACE, OF THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

June Sessions, 1938.

COUNTY OF PHILADELPHIA, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Townsend, late of the said County, yeoman, and Raymond Townsend, late of the said County, minor, on the eighth day of June, in the year of our Lord one thousand nine hundred and thirty-eight at the County aforesaid, and within the jurisdiction of this Court, feloniously, wilfully

and maliciously did enter the building and store there situate of William Weller with an intent, the goods and chattels, moneys and property in the said building and store then and there being found, feloniously to steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Frank Townsend and Raymond Townsend afterwards, to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, certain property, to wit, nine hundred and fifty pounds of white lead, together of the value of eighty-six dollars; eighty-two paint brushes, together of the value of sixty dollars; two gallons of Japan dryer, together of the value of three dollars; one and one half gallons of varnish, together of the value of five dollars; and five glass cutters, together of the value of one dollar; altogether of the value of one hundred and fifty-five dollars, of the goods and chattels, moneys and property of William Weller then and there being found, then and there feloniously did steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Frank Townsend and Raymond Townsend afterwards, to wit: On the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, the goods and chattels, moneys and properties aforesaid, by some ill-disposed person (to the Jurors aforesaid yet unknown) then lately before feloniously stolen, taken and carried away, feloniously, unjustly and for the sake of wicked gain did receive and have, the said Frank Townsend and Raymond Townsend then and there well knowing the goods and chattels, moneys and properties last mentioned to have been feloniously stolen, taken and carried away: contrary to the form of the Act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Charles F. Kelley, District Attorney.

[fol. 51] Magistrate's Testimony

Witnesses: William Weller, 1742 Germantown Ave. Det. Goldstein, 48; Det. Doolan, 25; Det. Hicks, 790; 9th Dist. Bail, $1000 each. Medway, Magistrate.

[Endorsed:] No. 314, June Sessions, 1938. Commonwealth vs. Frank Townsend, Raymond Townsend, 1620 Green St. 1st Count—Entering with intent to steal. 2nd Count—Larceny. 3rd Count—Receiving Stolen Goods. June 10, 1938. —— ——, Foreman. 6/13/38. The defendants being arraigned, plead Not Guilty as to Frank, Guilty as to Raymond. Dist. Atty. sim. et issue. 6/13/38. Verdict, Not Guilty as to Frank. 6/13/38. Sentence, as to Raymond Probation Five (5) years.

By the Court, Glass, Judge.

[fol. 52] Court of Quarter Sessions of the Peace for the City and County of Philadelphia

300 April Term, 1945.

The Commonwealth of Pennsylvania

versus

Edward Keenan

Sur Charge of Att. Burglary

I do certify, That Harry Cohen of 244 W. Penn St., became Bail for the Defendant in the above Case, in the sum of Twenty-five Hundred ($2500) dollars, by recognizance taken before Clerk Hahn on the 13 day of April, 1945. Conditioned for the appearance of said Defendant at the present term Court of Quarter Sessions, to answer said charge, as appears by the record of the said recognizance filed in my office at Philadelphia.

Witness my hand and seal of said Court, the 5 day of June in the year of our Lord one thousand nine hundred and 45.

Frank W. Hahn, Clerk. (Seal.)

[fol. 53] City of Philadelphia, ss:

I, Harry Cohen of 244 W. Penn St., bound in the within recognizance, a Bail of the said Edward Keenan, *do* hereby authorize, empower and depute for me and in my name, to take and arrest the said Edward Keenan and keep and detain him in custody, that he may be committed to the Jail of said County to answer the aforesaid Charge against him, or to be otherwise dealt with according to law. And I do hereby give to the said —— ——all power and authority to act and proceed in the premises, that I myself have and possess, and might, or could use and exercise therein, in every manner and form of law.

In witness whereof, I have hereunto set my hand and seal, at Philadelphia aforesaid, the 5 day of June, 1945.

Harry Cohen. (L.S.)

[fol. 54] Room 443, Fri., May 25. Listed for Trial.

Court of Quarter Sessions of the Peace for the City and County of Philadelphia

April 300 Term, 1945.

The Commonwealth of Pennsylvania

versus

Frank Townsend

Sur Charge of Attempted Burglary

I do certify, That Harry Cohen of 244 W. Penn St., became Bail for the Defendant in the above Case, in the sum of Twenty-five Hundred ($2500) dollars, by recognizance taken before Clerk of Court on the 13 day of April, 1945. Conditioned for the appearance of said Defendant at the present term Court of Quarter Sessions, to answer said charge, as appears by the record of the said recognizance filed in my office at Philadelphia.

Witness my hand and seal of said Court, the 19 day of May in the year of our Lord one thousand nine hundred and 45.

Frank W. Hahn, Clerk. (Seal.)

[fol. 55] City of Philadelphia, ss:

I, Harry Cohen of 244 W. Penn. St. bound in the within recognizance, a Bail of the said Frank Townsend *do* hereby authorize, empower and depute for me and in my name, to take and arrest the said Frank Townsend and keep and detain him in custody, that he may be committed to the Jail of said County to answer the aforesaid Charge against him, or to be otherwise dealt with according to law. And I do hereby give to the said ——— all power and authority to act and proceed in the premises, that I myself have and possess, and might, or could use and exercise therein, in every manner and form of law.

In Witness Whereof, I have hereunto set my hand and seal, at Philadelphia aforesaid, the 19 day of May, 1945.

Harry Cohen, L. S.

[fol. 56] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, April Sessions, 1945

Bill of Indictment.

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Keenan late of the said County, yeoman, and Frank Townsend late of the said county, yeoman, on the sixth day of April, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the building and restaurant then and there situate of Edward McManus unlawfully, wilfully, maliciously, feloniously and burglariously did —— enter with intent to commit a felony, to wit, with intent the goods, chattels, moneys and property of the said Edward McManus in said building and restaurant then and there being, feloniously and burglariously to steal, take and carry away; contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 57] Magistrate's Testimony

Witnesses: St. Sgt. Donohue 7. Ploszaj 2412. Allebach 3567. Det. Donahue 165. 2nd Det. Div., Edward McManus, 1414 N 8th St.

Scene: NE 24th & Fairmont. Bail $2500 ea. Harry Cohen (for Both) 244 W. Penn St. Townsend, by Hahn. Schwartz, Magistrate.

[Endorsed:] No. 300. April Sessions, 1945. Commonwealth vs. Edward Keenan, 722 N 22d St.; Frank Townsend, 1732 Wylie St. Attempted. Burglary. Apr. 13, 1945. True Bill. Roy O. Demming, Foreman. 6/15/45. The Defendants being arraigned, plead not guilty. 10/24/45. Defts. plead guilty.

Apr. 17, 1945, 453. May 25, 1945, 443. Jun. 15, 1945, 453. Oct. 24, 1945, 653. May 5, 1945, Recog. of Deft. and Surety forfeited. Edward Sessa, Pro. Clerk.

10/24/45.

Sentence, not less than (1) month nor more than (5) years at separate and solitary confinement in the Eastern State Penitentiary, to be computed from after any sentence now serving from Philadelphia and Montgomery Counties as to Deft. "Keenan."

By the Court, E. G. Judge.

10/24/45.

Sentence, not less than (1) month nor more than (5) years at separate and solitary confinement in the Eastern State Penitentiary, to be computed from after sentence on Bill #698. May, 1945, as to Deft. Townsend.

By the Court, E. G. Judge.

[fol. 58] IN THE COURT OF QUARTER SESSIONS OF THE PEACE OF THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

May Sessions, 1945.

COUNTY OF PHILADELPHIA, ss.:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Frank Townsend, late of the said County, yeoman, on the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, did unlawfully carry concealed upon his person a certain deadly weapon, commonly called a revolver, with the intent therewith unlawfully and maliciously to do injury to some other person to the Grand Inquest aforesaid as yet unknown: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Frank Townsend, on the said twenty-ninth day of April, in the year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this Court, did unlawfully carry, in a place not his abode nor his fixed place of business, to wit, concealed on or about the person of him the said Frank Townsend a firearm, to wit, a revolver with a barrel less than twelve inches, without a license therefor as required by law; said firearm not being an antique unsuitable for use and not possessed as a curiosity or ornament: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 59] [Endorsed] No. 691. May Sessions, 1945. Commonwealth vs. Frank Townsend. Carrying concealed deadly weapon. Unlawfully carrying firearm without a license. June 1st, 1945. True Bill Joseph Nuhall, Foreman. 6/5/45. The Defendant being arraigned, plead not guilty. 10/24/45 Deft. plead guilty. Sentence 10/24/45 One Month E. P. after sentence on bill #300. April 1945. —— ——, Judge.

June 5, 1945, 453. June 15, 1945, 453. October 24, 1945, 653.

Witnesses: Det. Lane, Lear, Kelly, Hicks, 142, Velma Mobley, Yellow Cab Co.

Scene: 323 S. 23rd St. Bail Fugitive. Hon. Gerald Flood, Judge.

[fol. 60] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY OF THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

May Sessions, 1945.

COUNTY OF PHILADELPHIA, ss.:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Joseph Kopitsko, Edward Keenan and Charles Cain and Frank Townsend, late of the said County, yeomen, on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument in and upon one Wade Mitchell feloniously did make an assault, with intent to rob the said Wade Mitchell and the goods and chattels, moneys and property of the said Wade Mitchell, then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend on the said twenty-fourth day of March, in the said year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., together with divers other persons whose names are to this Grand Inquest as yet unknown, in and upon the said Wade Mitchell feloniously did make an assault, with an intent feloniously and violently to rob the said Wade Mitchell and the goods and chattels moneys and property of the said Wade Mitchell then and

there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania. [fol. 61] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend, on the said twenty-fourth day of March, in the said year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this Court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument, in and upon Wade Mitchell feloniously did make an assault, and the said Wade Mitchell in bodily fear and danger of his life then and there feloniously did put, and in the presence and against the will of the said Wade Mitchell certain moneys and property, to wit, the sum of three thousand dollars, in lawful money of the United States, of the value of three thousand dollars, of the moneys and property of said Wade Mitchell, unlawfully did and there attempt to feloniously rob, seize, steal, take and carry away; and a certain Buick sedan automobile, of the value of seventeen hundred dollars, of the goods and chattels, moneys and property of the said Wade Mitchell then and there feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of the Court aforesaid with force and arms, etc., together with divers other persons, whose names are to the said Grand Inquest as yet unknown, in and upon the said Wade Mitchell feloniously did make an assault, and the said Wade Mitchell in bodily fear and danger of his life, then and there felon- [fol. 62] iously did put, and in the presence and against the will of the said Wade Mitchell, said sum of three thousand dollars, in lawful money of the United States, of the property of said Wade Mitchell did unlawfully attempt to feloni-

ously rob, seize, steal, take and carry away; and said Buick sedan automobile of the value of seventeen hundred dollars, of the goods and chattels, moneys and property of the said Wade Mitchell then and then feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of the Court aforesaid, with force and arms, etc., in and upon the said Wade Mitchell did make an assault and the said Wade Mitchell in bodily fear and danger of his life, did put, and in the presence and against the will of said Wade Mitchell the goods and chattels, moneys and property in the third count of this indictment set forth, of the goods and chattels, moneys and property of the said Wade Mitchell then and there feloniously and violently did rob, seize, steal, take and carry away, and that they the said Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend immediately before, and at the same time of and immediately after, the commission of the aforesaid felony and robbery, the said Wade Mitchell feloniously did beat, strike, ill use, and do other violence to: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid do further present, That the above named Defendants on the day and year aforesaid, at the County aforesaid, did commit and attempt to commit a crime of violence, to wit, the hereinabove described offense of attempted robbery and robbery when and while armed with a firearm, contrary to the provisions of Sec. 628, Sub. Sec. b of an Act of Assembly of said Commonwealth approved the 24th day of June, A. D. 1939, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 63] Witnesses: Wade Mitchell, 758 S. 15th St. Det. Lane 83, Lear, Kelly, Hicks 142, Rocco Antonio, 1029 S. 9th St., Jos. Rizzo, C. P.

Scene: 1018 E. Passyunk ave. Townsend—fugitive—rest—without bail, c. Hon. Gerald Flood, Judge and Costello, Magistrate.

[Endorsed:] No. 696. May Sessions, 1945. Commonwealth vs. Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend.

1st Count, Assault—Being Armed with an offensive weapon with intent to rob.

2nd Count, Assault.—Together with other persons, with intent to rob.

3rd Count, Robbery—Being armed with an offensive weapon.

4th Count, Robbery—Together with other persons.

5th Count, Robbery—And at commission thereof, beating, striking, and ill-using.

6th Count, Committing a crime of violence while being armed with a firearm.

June 1st, 1945. True Bill. Joseph Nuhall, Foreman. 6/5/45. The Defendants being arraigned, plead guilty. Eo Die. As to Cain (see inside).

Sentence, not less than (10) years nor more than (20) years at separate and solitary confinement in the Eastern State Penitentiary, to be computed from 5-24-45. By the Court. See bill 698 as to Keenan & Townsend. S. —— ——, Judge.

6/15/45, as to Kopitsko. Sentence, not less than 2½ years nor more than (5) years, at separate and solitary confinement in the Eastern State Penitentiary, to begin —— —— parole on sentence imp. 9/27/40. By the Court. —— ——, Judge. On Bill #29 June 1940 of Lehigh County.

June 5, 1945, 453. June 15, 1945, 453.

[fol. 64] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY OF THE COUNTY OF PHILADELPHIA

BILL OF INDICTMENT

May Sessions, 1945.

COUNTY OF PHILADELPHIA, ss.:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Keenan, Orville Foulke and Frank Townsend, late of the said County, yeomen, on the thirtieth day of March, in the year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument in and upon one James Renfroein feloniously did make an assault, with intent to rob the said James Renfroein and the goods and chattels, moneys and property of the said James Renfroein then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Keenan, Orville Foulke and Frank Townsend on the said thirtieth day of March, in the said year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., together with divers other persons whose names are to this Grand Inquest as yet unknown, in and upon the said James Renfroein feloniously did make an assault, with an intent feloniously and violently to rob the said James Renfroein and the goods and chattels moneys and property of the said James Renfroein then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 65] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Kenan, Orville Foulke and Frank Town-

send, on the said thirtieth day of March, in the said year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this Court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument, in and upon James Renfroein feloniously did make an assault, and the said James Renfroein in bodily fear and danger of his life then and there feloniously did put, and in the presence of and against the will of the said James Renfroein certain moneys and property, to wit, a certain Buick sedan automobile, of the value of fifteen hundred dollars, of the property of one David E. Keiser; and from the person and against the will of the said James Renfroein, certain property, to wit, one wallet, of the value of one dollar and the sum of five dollars, in lawful money of the United States, together of the value of six dollars, of the goods and chattels, moneys and property of the said James Renfroein, then and there feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Keenan, Orville Foulke and Frank Townsend, on the thirtieth day of March, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of the Court aforesaid with force and arms, etc., together with divers other persons, whose names are to the said Grand Inquest as yet unknown, in and upon the said James Renfroein feloniously did make an assault, and the said James Renfroein in bodily fear and danger of his life, then and there feloniously did put, and [fol. 66] in the presence and against the will of said James Renfroein, a Buick sedan automobile, of the value of fifteen hundred dollars, of the property of one David E. Keiser; and from the person and against the will of the said James Renfroein, one wallet, of the value of one dollar and the sum of five dollars, in lawful money of the United States, together of the value of six dollars, of the goods and chattels, moneys and property of the said James Renfroein, then and there feloniously and violently did rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and

against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid do further present, That the above named Defendant on the day and year aforesaid, at the County aforesaid, did commit and attempt to commit a crime of violence, to wit, the hereinabove described offense of Robbery, when and while armed with a firearm, contrary to the provisions of Sec. 628, Sub. Sec. b of an Act of Assembly of said Commonwealth approved the 24th day of June, A. D. 1939, and against the peace and dignity of the Commonwealth of Pennsylvania.

John M. Maurer, District Attorney.

[fol. 67] Witnesses: James Renfroein, 165 N. Edgewood St.; Benj. Wang, 2109 N. Redfield St. David E. Keiser, 2601 Parkway. Det. Lane 83, Lear 13, Kelly 198, Hicks, 142.

Scene: NE 27th & Brown st. Hon. Gerald Flood, Judge and Costello, Magistrate.

[Endorsed:] No. 697. May Sessions, 1945. Commonwealth vs. Edward Keenan, Orville Foulke, and Frank Townsend.

1st Count, Assault—Being Armed with an offensive weapon with intent to rob.

2nd Count, Assault—Together with other persons, with intent to rob.

3rd Count, Robbery—Being armed with an offensive weapon.

4th Count, Robbery—Together with other persons.

5th Count—Committing a crime of violence while being armed with a firearm.

June 1st, 1945. True Bill. Joseph Nuhall, Foreman. 6/5/45. The Defendants being arraigned, plead not guilty. —— ——, Dist. Attl. sim. et issue. 10/24/45. Verdict Not guilty (3) Defts. County pay costs.

June 5, 1945, 453. June 15, 1945, 453. October 24, 1945, 653.

[fol. 68] IN THE COURT OF OYER AND TERMINER AND GENERAL JAIL DELIVERY OF THE COUNTY OF PHILADELPHIA—MAY SESSIONS, 1945

BILL OF INDICTMENT

COUNTY OF PHILADELPHIA, SS:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Keenan, Orville Foulke and Frank Townsend, late of the said County, yeomen, on the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument in and upon one Velma Mobley feloniously did make an assault, with intent to rob the said Velma Mobley and the goods and chattels, moneys and property of body corporate *corporate* named and called the Yellow Cab Company, then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Keenan, Orville Foulke and Frank Townsend on the said twenty-ninth day of April, in the said year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., together with divers other persons whose names are to this Grand Inquest as yet unknown, in and upon the said Velma Mobley feloniously did make an assault, with an intent feloniously and violently to rob the said Velma Mobley and the goods and chattels, moneys and property of the said body corporate named and called The Cab Company, then and there feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[fol. 69] And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the

said Edward Keenan, Orville Foulke and Frank Townsend, on the said twenty-ninth day of April, in the said year of our Lord one thousand nine hundred and forty-five, at the county aforesaid, and within the jurisdiction of this Court, with force and arms, etc., being armed with an offensive weapon and with an offensive instrument, in and upon Velma Mobley feloniously did make an assault, and the said Velma Mobley in bodily fear and danger of his life then and there feloniously did put, and in the presence of and against the will of the said Velma Mobley certain moneys and property, to wit, the sum of three thousand dollars, in lawful money of the United States, of the value of three thousand dollars, of the goods and chattels, moneys and property of the said body corporate named and called the Yellow Cab Company, unlawfully did attempt to then and there feloniously and violently rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said Edward Keenan, Orville Foulke and Frank Townsend, on the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of the Court aforesaid with force and arms, etc., together with divers other persons, whose names are to the said Grand Inquest as yet unknown, in and upon the said Velma Mobley feloniously did make an assault, and the said Velma Mobley in bodily fear and danger of his life, then and there feloniously did put, and in [fol 70] the presence and against the will of the said Velma Mobley, the sum of three thousand dollars, in lawful money of the United States, of the value of three thousand dollars, of the goods and chattels, moneys and property of the said Velma Mobley, unlawfully did attempt to then and there feloniously and violently rob, seize, steal, take and carry away: contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid, do further present, That the said —— on the —— day of —— in the year of our Lord one thousand nine hundred and forty- ——, at the county

aforesaid, and within the jurisdiction of the Court aforesaid, with force and arms, etc., in and upon the said did make an assault and the said —— in bodily fear and danger of —— life, did put, and —— the goods and chattels moneys and property in the third count of this indictment set forth, of the goods and chattels, moneys and property of the said —— then and there feloniously and violently did rob, seize, steal, take and carry away, and that the said —— immediately before, and at the same time of and immediately after, the commission of the aforesaid felony and robbery, the said —— feloniously did beat, strike, ill use, and do other violence to: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

And the Grand Inquest aforesaid, upon their oaths and affirmations aforesaid do further present, That the above named Defendant on the day and year aforesaid, at the County aforesaid, did commit and attempt to commit a crime of violence, to wit, the hereinabove described offense of Robbery when and while armed with a firearm, contrary to the provisions of Sec. 628, Sub Sec. b of an Act of Assembly of said Commonwealth approved the 24th day of June, A. D. 1939, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 71] Witnesses: Det. Lane, 83; Lear, 13; Kelly, 198; Hicks, 142; Velma Mobley, 323 S. 23rd St.

Scene: 323 S. 23rd St. Bail, Townsend-fugitive rest-without c. Hon. Gerald Flood, Judge; Costello, Magistrate.

[Endorsed:] No. 698. May Sessions, 1945. Commonwealth vs. Edward Keenan, Joseph Kopitsko, Walter Jankowski, Orville Foulke and Frank Townsend. *1st Count, Assault.*—Being Armed with an offensive weapon with intent to rob. *2nd Count.*—Together with other persons, with intent to rob. *3rd Count,* Attempted *Robbery.*—Being armed with an offensive weapon. *4th Count,* Attempted *Robbery.*—Together with other persons. *6th Count,* Committing a crime of violence while being armed with a firearm. June 1st, 1945. True Bill. Joseph Nuhall, Foreman. 6/5/45. The Defendants being arraigned, plead guilty. Verdict Kopitsko on bill 696. See inside.

6/5/45.

As to Townsend, Keenan & ——, Sentence, not less than (10) years nor more than (20) years each at separate and solitary confinement in the Eastern State Penitentiary, to be computed from 5-24-45 as to Keenan. Townsend from 6/5/45 pay costs.

By the Court, Harry S. McDevitt, Judge.

6/5/45

As to Foulke & Jankowski, Sentence, not less than 7½ years nor more than (15) years each at separate and solitary confinement in the Eastern State Penitentiary, to be computed from 5-24-45. Pay costs.

By the Court, H. S. McDevitt, Judge.

June 5, 1945. 453. June 15, 1945. 453.

[fol. 72] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia—May Sessions, 1945

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Keenan, Orville Foulke and Frank Townsend, Joseph Kopitsko and Walter Jankowski, late of the said county, yeomen, on the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the certain building and garage then and there situate of a certain body corporate named and called Yellow Cab Company, unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent in and upon one Velma Mobley in said building and garage then being found, feloniously and violently to make an assault, and the said Velma Mobley in bodily fear and danger of his life then and there unlawfully and feloniously to put, and with intent then and there, from the person, in the presence of and against the will of the said Velma Mobley certain of the

goods, chattels, moneys and property of and belonging to the said body corporate named and called The Yellow Cab Company, feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 73] Witnesses: Velma Mobley, 323 S. 23rd St., Det. Lane, 83; Lear, 13; Kelly, 198; Hicks, 142. Scene: 323 S. 23rd St. Townsend-fugitive rest-without bail. c.

Hon. Gerald Flood, Judge and Costello, Magistrate.

[Endorsed:] No. 699. May Sessions, 1945. Commonwealth vs. Edward Keenan, Joseph Kopitsko, Walter Jankowski, Orville Foulke and Frank Townsend. Burglary with intent to commit a felony, to wit, to rob. June 1st, 1945. True Bill. Joseph Nuhall, Foreman, 6/5/45. The Defendants being arraigned, plead guilty. Sentence, on bills 696, 698 deferred as to Kopitsko.

June 5, 1945. 453. June 15, 1945. 453.

[fol. 74] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia—May Sessions, 1945

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Edward Keenan, Orville Foulke and Frank Townsend, late of the said county, yeomen, on the thirtieth day of March, in the year of our Lord one thousand nine hundred and forty-five, at the County aforesaid, and within the jurisdiction of this Court, with force and arms, etc., the certain building and garage then and there situate of Benjamin Wang unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to wit, with intent in and upon one James Renfroein in said building and

garage then being found, feloniously and violently to make an assault, and the said James Renfroein in bodily fear and danger of his life then and there unlawfully and feloniously to put, and with intent then and there, from the person, in the presence of and against the will of the said James Renfroein certain of the goods, chattels, moneys and property of and belonging to the said James Renfroein and one David E. Keiser feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fols. 75-76] Witnesses: James Renfroein, 165 N. Edgewood St.; Benj. Wang; 2109 N. Redfield; David E. Keiser, 2601 Parkway; Det. Lane, 83; Lear, 13; Kelly, Hicks, 142.

Scene: NE 27th & Brown St. c.

Hon. Gerald Flood, Judge and Costello, Magistrate.

[Endorsed:] No. 700. May Sessions, 1945. Commonwealth vs. Edward Keenan, Orville Foulke and Frank Townsend. Burglary with intent to commit a felony, to wit, to rob. June 1st, 1945. True Bill. Joseph Nuhall, Foreman. 6/5/45. The Defendants being arraigned, plead not guilty. Dist. Atty. sim. et isue. 10/24/45. Verdict, Not Guilty (3) Defts. County pay costs.

June 5, 1945. 453. June 15, 1945. 453. Oct. 24, 1945. 653.

[fol. 77] In the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace, for the County of Philadelphia, May Sessions, 1945

Bill of Indictment

County of Philadelphia, ss:

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the County of Philadelphia, upon their respective oaths and affirmations, do present, That Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend late of the said county, yeomen, on the twenty-fourth day of March, in the year of our Lord one thousand nine hundred and five at the County aforesaid, and within the

jurisdiction of this Court, with force and arms, etc., the certain building and garage then and there situate of Joseph Rizzo unlawfully, wilfully, maliciously, feloniously and burglariously did enter with intent to commit a felony, to, wit, with intent in and upon one Wade Mitchell in said building and garage then being found, feloniously and violently to make an assault, and the said Wade Mitchell in bodily fear and danger of his life then and there unlawfully and feloniously to put, and with intent then and there, from the person, in the presence of and against the will of the said Wade Mitchell certain of the goods, chattels, moneys and property of and belonging to the said Wade Mitchell feloniously and violently to rob, seize, steal, take and carry away: contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

John H. Maurer, District Attorney.

[fol. 78] Witnesses: Wade Mitchell, County Prison, Holmesburg. Det. Lane, 83; Lear, Kelly, Hicks, 142. Bail —. Townsend—fugitive rest-without. c. Hon. Gerald Flood, Judge and Costello, Magistrate.

[Endorsed:] No. 701. May Sessions, 1945. Commonwealth vs. Joseph Kopitsko, Edward Keenan, Charles Cain and Frank Townsend. Burglary with intent to commit a felony, to wit, to rob. June 1st, 1945. True Bill. Joseph Nuhall, Foreman. 6/5/45. The Defendants being arraigned, plead guilty. Sentence on bills 696, 698. June 5, 1945. 453. June 15, 1945. 453.

[fol. 79] COURT OF QUARTER SESSIONS, MAY SESSIONS, 1945

COMMONWEALTH

vs.

No. 691. C.C.D.W. w/o a license

FRANK TOWNSEND

696. A. with int. to rob. Robbery &c. Comtg. crime of viol. while armed

701. Burg. with int. to com. felony to rob

JOSEPH KOPITSKO, EDWARD KEENAN, CHARLES CAIN and FRANK TOWNSEND

697. A. with int. to rob. Robbery &c. Comtg. crime of viol. while armed

700. Burg. with intent to com. fel. to rob

EDWARD KEENAN, ORVILLE FOULKE and FRANK TOWNSEND

698. A. with int. to rob. Attem. Robbery. Comtg. crime of viol. w. armed

699. Burg. with int. to com. felony to rob

EDWARD KEENAN, JOSEPH KOPITSKO, WALTER JANKOWSKI, ORVILLE FOULKE and FRANK TOWNSEND

702. Burglary & R.S.G.

709. C.C.D.W. w/o a license

JOSEPH KOPITSKO

703. Burglary & R.S.G.

711. C.C.D.W. w/o license

CHARLES CAIN and EDWARD KEENAN

704. Burglary and R.S.G.

JOSEPH KOPITSKO, EDWARD KEENAN and WALTER JANKOWSKI

705. Burglary and R.S.G.

JOSEPH KOPITSKO and EDWARD KEENAN

706. C.C.D.W. w/o License

WALTER JANKOWSKI

707. C.C.D.W. w/o License

ORVILLE FOULKE

708. C.C.D.W. w/o License

EDWARD KEENAN

[fol. 80] No. 710. Operating Motor Vehicle w/o consent of owner

JOSEPH KOPITSKO, CHARLES CAIN and EDWARD KEENAN

Philadelphia, Pa., June 5, 1945.

Before McDevitt, P. J.

Present: Ephraim Lipschutz, Esq., For Commonwealth. James Dessen, Esq., For Defendant, Joseph Kopitsko.

STENOGRAPHER'S TRANSCRIPT—Filed June 26, 1945

[fol. 81] COMMONWEALTH'S EVIDENCE

Mr. Dessen: Bill 698 has Kopitsko's name on the face of the indictment, but not in the body of the indictment.

The Court: We will amend it. It doesn't make much difference.

Mr. Dessen: No, sir. I thought your Honor ought to know about it.

DETECTIVE PATRICK LANE, No. 83, sworn.

By Mr. Lipschutz:

Q. What is your name?

A. Detective Lane, No. 83.

Q. Tell his Honor the number of cases in which these defendants are involved, and just go on from the first one and tell how they were involved and just what occurred?

A. On May 10, between 2 and 4 A.M. the taproom of John Corialos was broken into and five bottles of whiskey were taken from there. This was done by Keenan and Cain. On April 29——

Q. How was the taproom broken into?

A. They broke a window. Then broke a panel in the door on the inside.

Q. What did they obtain?

[fol. 82] A. Five bottles of liquor partly full.

Q. What happened to the liquor?

A. They drank it.

On April 29, 1945, 11:45 P. M., the Yellow Cab office, located at 323 South 23rd was held up at the point of gun and attempted a safe robbery in there.

Q. By whom?

A. Keenan, Kopitsko, Jankowski, Foulke and Townsend.

Q. What did they get?

A. Nothing. They attempted to take the safe, but seeing they couldn't budge it left it there.

On March 23rd—between the 23rd and the 24th a garage located at 1627 Brandywine Street, which is owned by Maurice Coyle who does acetylene welding and burning and has that equipment in the garage mounted on a truck, has his truck stolen from there by —— Kopitsko is the one who took the truck out of there. Then he took that truck and met the others, met Keenan, Cain and Townsend and at 1018 East Passyunk there is a public garage that had a safe in the office. They gained admittance to that garage by talking to Wade Mitchell, the attendant, and as a result they drove the welding equipment in the garage and closed the door and endeavored to burn the safe. The equipment wouldn't function for them so they abandoned it, and they taken the attendant and forced him to the rear of the garage [fol. 83] which goes from Passyunk Avenue to 8th Street—they taken him closer to 8th Street and Cain kept him in custody in an automobile there.

Q. Was there a gun used in that case?

A. Yes, there was. Then they abandoned the welding equipment and the truck and stole a Buick Sedan out of the garage and made their escape, which they later abandoned on 9th Street in the vicinity of Lombard. That was owned by Rocco Calintonio.

March 18, between 1 and 6 A. M. they broke into a taproom. This was Keenan, Kopitsko and Townsend, broke into a taproom located at 5019 North Broad Street.

Q. How did they get into that taproom?

A. They forced the top screen in the window down and entered the taproom and located the offices in there and saw that there was a safe in there, but they didn't have any machine to move it. So, they stole—came back downtown and stole an automobile and went back up there and took the safe and its contents out of there, along with Coast Guard shirts, cigars and liquor; took the safe to the vicinity of 27th and Fairmount and broke the door open and took the contents which contained $1150 in change and other valuable papers.

Q. Did you recover any of the property?

A. Recovered a revolver.

Q. Where did you get that revolver?

[fol. 84] A. This revolver was turned in to us by Joseph Kopitsko. He had it in his possession. This along with others was stolen from the premises, which Townsend told me he threw in the river after the rest of these defendants had been arrested.

Q. Is that revolver unloaded?

A. Yes, sir.

Q. What else happened?

A. 4-29-45, 11:15 P. M., the public garage located 628 Arch Street, owned by Sam Goldberg was entered by Keenan, Kopitsko and Jankowski, and a Chevrolet Sedan was stolen out of there that was later abandoned on the highway and recovered.

A garage located at 27th and Brown, on 3-30-45——

By the Court:

Q. They pleaded not guilty on that. Don't tell us anything about that.

A. That is the sum and substance of them all.

The Court: Who do you represent?

Mr. Dessen: Kopitsko.

The Court: Do you want to ask any qusetions?

Mr. Dessen: Yes, sir.

[fol. 85] Cross-examination.

By Mr. Dessen:

Q. The garage on Passyunk Avenue, who were the individuals that went in and took Wade Mitchell to the rear portion of the garage?

A. I have a statement here. By Keenan: "By prearrangement we met Joe Kopitsko and Charley. By Cain: We walked up to the door, Eddy Keenan and I. We both had guns. Eddy had one and I had one. The door was locked. After knocking on the door a colored fellow came to the door. We asked him could we use his toilet. We walked in and pulled the guns on him, both of us. We marched him to the back of the garage and put him in a car. I sat in the rear of the garage watching him."

Q. That is by both Keenan and Cain?

A. Cain makes that statement.

WADE MITCHELL, sworn.

By Mr. Lipschutz:

Q. Do you reside at 758 South 15th Street?
A. 813 South 17th Street.

By the Court:

Q. Were you robbed?
A. In the garage. I was stuck up.

[fol. 86] By Mr. Lipschutz:

Q. Where is this garage located?
A. 1018 Passyunk Avenue.
Q. When were you robbed?
A. I don't remember just exactly the date.

Q. Will you tell us just what happened and what if anything any of these men did to you?

A. I was working that night. I was in back simonizing a car. As I get through with the car along about 3:30 I bring the car up to the front, as usual. And I parks it and I goes in the office. I turns on the radio to see what time it was. So, I see two fellows pass a window. I didn't pay much attention. I saw them walk up to the corner and turn around and come back. Then they was headed towards the door, the front door. So, he came up there and knocked. I went out and opened the door as I would for anybody else. As I opened it he came in and said, "May I use your toilet? Where is your toilet?" I said, "There it is over there." He went in there and a little fellow came in behind him and he went in the toilet and stayed in just about long enough—about a minute or so and he came out. When he came out he had a gun like this to me. He said, "Kid, this is a stickup." He said, "Don't holler. Don't say nothing. If you do, I will blow your brains out." So, I didn't say nothing. That is when the short fellow pulled his gun out, [fol. 87] looked like an automatic.

Q. Look at these men. Can you identify any of these men?

A. The fellow over there.
Q. Which fellows, what number?
A. With the bright shirt on.

By the Court (addressing Cain):

Q. Stand up. What's your name?

A. Cain.

By Mr. Lipschutz (addressing Wade Mitchell):

Q. Is that the man?

A. He reminds me of the one that was holding me in the back of the Cadillac.

Q. Who else can you recognize?

A. I don't recognize the other fellows so good.

JOHN CORIALOS, sworn.

By Mr. Lipschutz:

Q. What is your name?

A. John Corialos.

Q. Your address?

A. 109 Glendale Road, Upper Darby.

Q. Tell his Honor what happened to you and when?

A. May 10 I received a telephone call at my home about 4 A. M., 3:30 or 4 in the morning telling me to come immediately down to my place of business because the place was [fol. 88] robbed.

Q. Where is your place of business?

A. Southwest corner of 15th and Callowhill.

Q. When you arrived there what did you discover?

A. When I arrived there I found the Sergeant and a cop in the place. They had broken the door leading to the second floor. Then the panel of the door leading to the store. They went through the panel of the door in the store.

By the Court:

Q. What did you lose?

A. I lost five bottles of whiskey.

Q. Is that all?

A. Yes, sir.

By Mr. Lipschutz:

Q. You don't know who was in there?

A. No, sir.

Q. What was the value of your loss?

A. I don't know whether the bottles were full or half. I can't tell you.

[fol. 89] DETECTIVE PATRICK LANE, No. 83, recalled.

By Mr. Dessen:

Q. Detective Lane, in the holdup on Passyunk Avenue have all the persons who were involved, at least from your investigation, been arrested?

A. Yes, sir.

Mr. Dessen: I say that to your Honor, but there is another person under indictment for this same offense that hasn't been disposed of, out on bail, whom I also represent. That is the reason for my question.

Detective Lane: The man that is under arrest had his photo picked out in the gallery by this colored attendant here, and he has this disfigurement the same as Keenan has. He definitely picked him out, said that was the man, and as a result he was indicted for that job. Then later Keenan admitted his part in the job.

The Court: So the other man isn't implicated?

Detective Lane: No, sir. He is out on bail.

The Court: I don't want to try these defendants on the other bills before this jury after pleading guilty to some of them. You will have to continue those and try them before some other jury.

By the Court (addressing Townsend):

Q. Townsend, how old are you?

A. 29.

Q. You have been here before, haven't you?

[fol. 90] A. Yes, sir.

Q. 1933, larceny of automobile. 1934, larceny of produce. 1930, larceny of bicycle. 1931, entering to steal and larceny. 1938, entering to steal and larceny in Doylestown. Were you tried up there? No, no. Arrested in Doylestown. That was up on Germantown Avenue, wasn't it? You robbed a paint store.

A. No. That was my brother.

Q. You were tried for it, weren't you?

A. Yes, but I was not guilty.

Q. And 1945, this. 1936, entering to steal and larceny, 1350 Ridge Avenue. Is that your brother too?

A. No.

Q. 1937, receiving stolen goods, a saxophone. What did you want with a saxophone? Didn't hope to play in the prison band then, did you?

The Court: Ten to twenty in the Penitentiary.

By the Court (addressing Cain):

Q. Keenan, how many times have you been here?
A. Quite a few.
Q. You started as a juvenile too, didn't you?
A. Yes, sir.
Q. Larceny of automobile back in 1937. Again in 1937, suspicion of larceny of a Yellow Cab. Judge Crumlish [fol. 91] gave you a chance, put you on probation the first time. 1930, larceny of an automobile.
1938, larceny of an automobile.
1943, larceny of a revolver. Aggravated assault and battery.
1945, April, attempted burglary. That is this one.

The Court: Well, if you want to be gunmen you better get out of Philadelphia. This isn't a very happy hunting ground for you. Ten to twenty.

By the Court (addressing Cain):

Q. How many times have you been arrested?
A. Twice.
Q. What?
A. Two times.
Q. 1940, larceny of an automobile. That is once.
1938, breaking and entering. That is twice.
1939, violation of the Witkin Firearm Act. That is three times. This is the fourth, isn't it?
A. Yes.
Q. You want to be a big timer too, don't you?
A. No.

The Court: Ten to twenty.

[fol. 92] By the Court (addressing Orville Foulke):

Q. How many of these crimes were you in on?
A. One.
Q. How many times have you been here before?
A. Once.

Q. Frequenter of a disorderly taproom in 1939.
Assault and battery by fist in 1940.
Assault and battery, resisting arrest, in 1942. And this.

The Court: I guess you are not as bad as the rest of them. Seven and a half to fifteen.

By the Court (addressing Jankowski):

Q. How many times have you been here, Jankowski?
A. About three times.
Q. How many of these jobs were you in?
A. Just the one.
Q. Which one?
A. The taxicab.
Q. 1935, larceny by shoplifting and vagrancy.
1936, suspicious character.
1936, I don't know what—larceny of candy from Schulte's Cigar Store, Broad and Arch. Do you like candy?
A. Sometimes.
Q. 1937, suspicious character. 1937, larceny by sneak. [fol. 93] Entered the restaurant of Tillie's, 1110 Sansom Street, and stole a pocketbook. Is that you?
A. Yes, sir.
Q. And this.

The Court: I don't think you are as tough as the other two. Seven and a half to fifteen.

Mr. Dessen: Kopitsko is 23 years of age, lives with his mother and is one of twelve children. He had been working prior to his arrest as a longshoreman.

The Court: I am not disposing of him today for reasons I don't care to divulge right now. Bring him up the last day of the term.

[fol. 94] Philadelphia, Pa., June 15, 1945.

By the Court (addressing Joseph Kopitsko):

Q. How much time have you to do upstate some place?
A. Two and a half.
Q. Where?
A. Eastern State Penitentiary.
Q. From what county?
A. Lehigh.

The Court: When you get through doing your back time do two and a half to five on this.

[fols. 95-96] I hereby certify that the proceedings, evidence and charge are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this is a correct transcript of same.

Harris G. Lighty, Official Stenographer.

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Harry S. McDevitt, President Judge.

[fol. 97] SUPREME COURT OF THE UNITED STATES—OCTOBER TERM, 1947

No. 55, Misc. —

FRANK TOWNSEND, Petitioner,

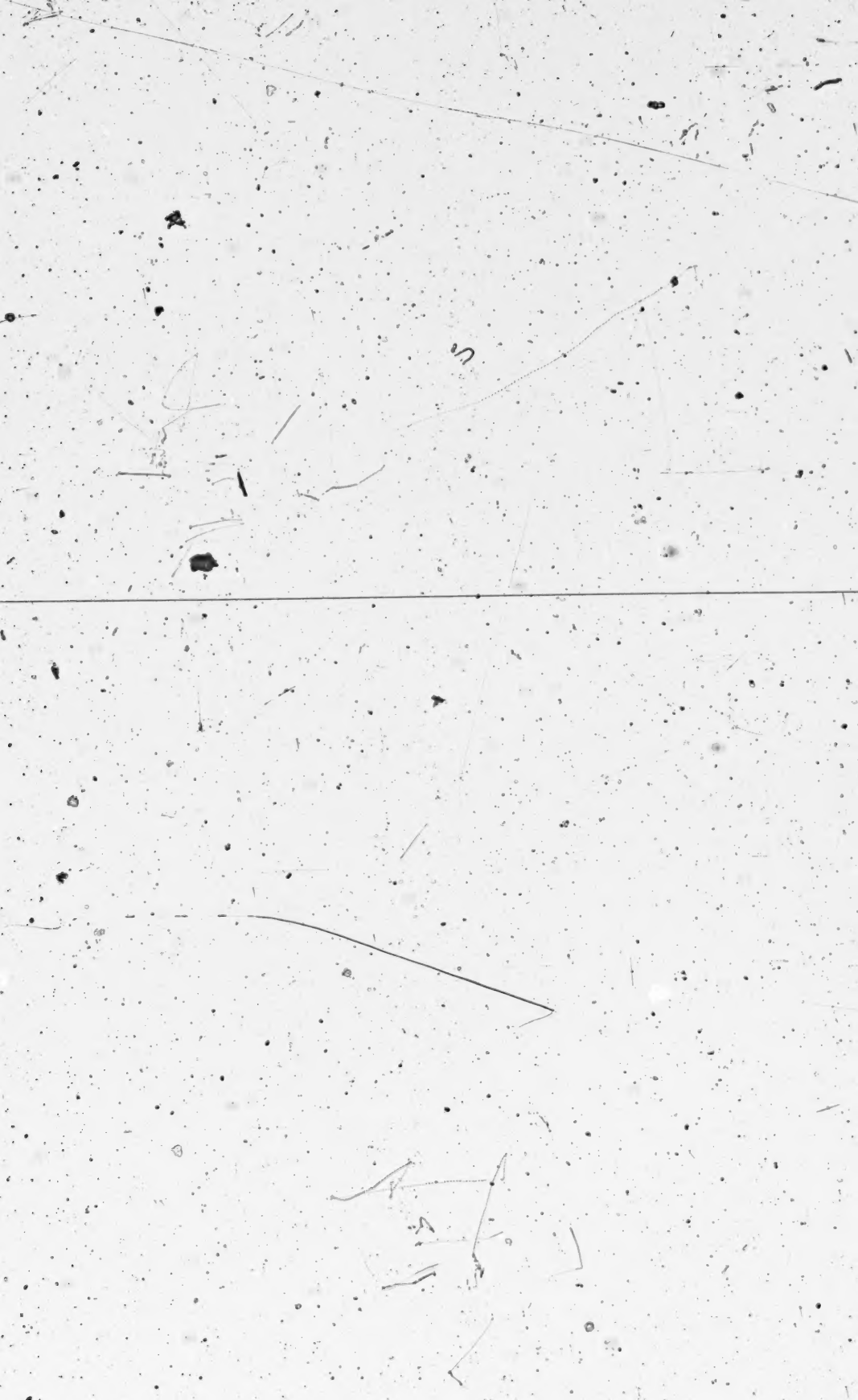
vs.

C. J. BURKE, Warden

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is ordered transferred to the appellate docket.

January 19, 1948.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

Petition not printed

No. 542

FRANK TOWNSEND,

Petitioner,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE PETITIONER

ARCHIBALD COX,
Counsel for Petitioner.

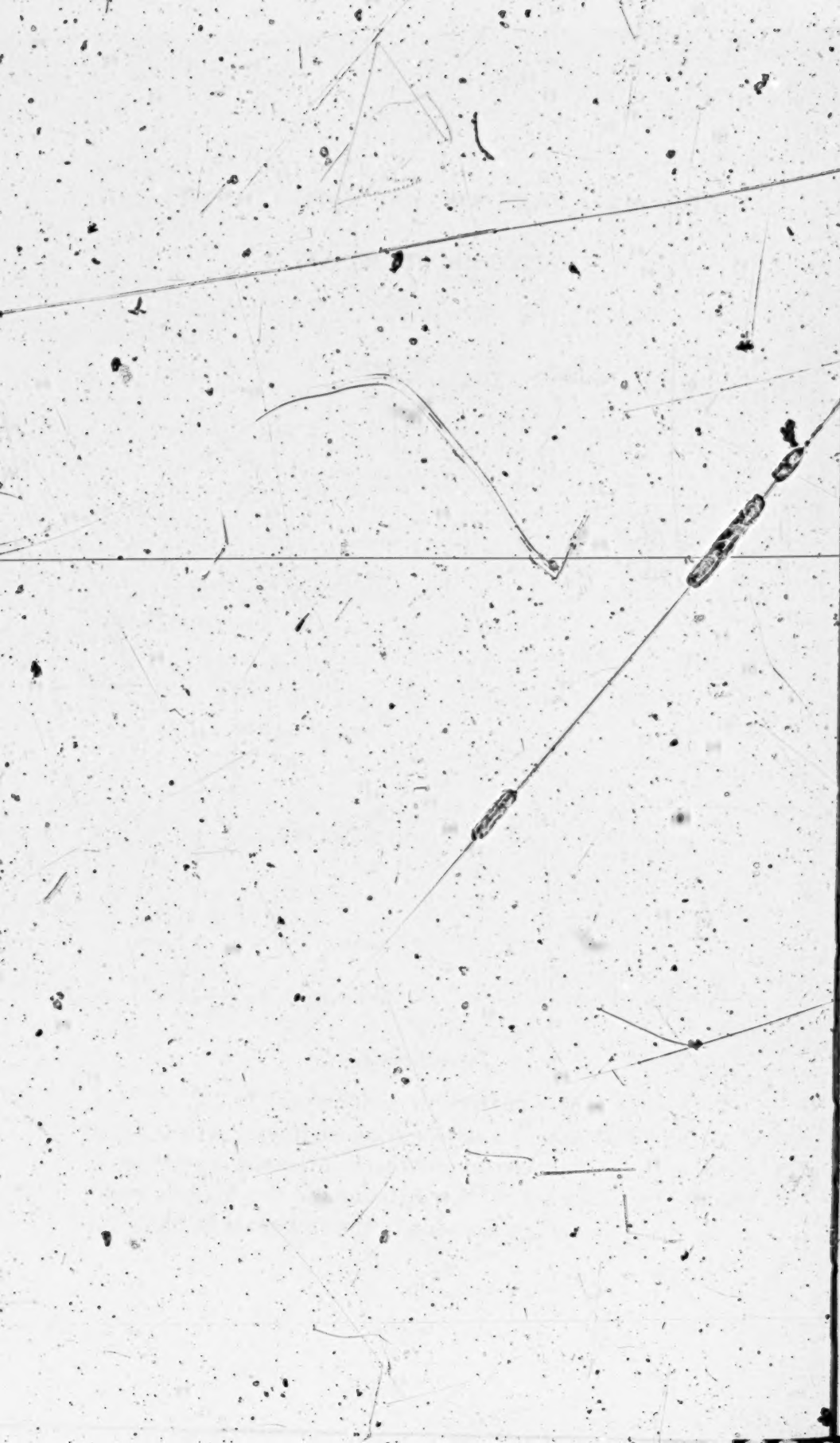
INDEX

Subject Index

Citations

Cases:

Other Authorities:



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 542

FRANK TOWNSEND,

Petitioner,

vs.

C. J. BURKE, WARDEN, EASTERN STATE PENITENTIARY,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE PETITIONER

Opinion Below

The Supreme Court of Pennsylvania did not file an opinion.

Jurisdiction

Petitioner contends that his confinement in the Eastern State Penitentiary is a deprivation of liberty without due process of law in violation of the Fourteenth Amendment. The Supreme Court of Pennsylvania is the highest court of the State in which a decision in the suit could be had. Its

final order on the petition for a writ of *habeas corpus* was entered on May 26, 1947 (R. 1). Petitioner's motion for leave to proceed *in forma pauperis* and his petition for certiorari were filed on August 1, 1947 and granted on January 19, 1948 (R. 54). The jurisdiction of this Court is based upon Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented

Whether the action of the Pennsylvania authorities in holding petitioner incommunicado for the forty hours between his arrest and trial, except for a ten minute conversation with his wife, and in sentencing him immediately thereafter to a long term of imprisonment, without benefit of counsel or explanation of the charges against him, met the fundamental standards of fairness and decency imposed by the Fourteenth Amendment.

Statement

Petitioner was arrested at 7:15 P. M. on June 3, 1945, by the Philadelphia police and taken to the 9th District Police Station where he was questioned for an hour (R. 2-3). Then he was moved to another police station and questioned again (R. 3). Thereafter he was transferred to still a third station (R. 3). At 5:00 P. M. on June 4 he was taken to the City Hall to be fingerprinted, and was returned to the police station (R. 3). During all this period he was "deprived of his right to contact anyone" (R. 3). Finally, about two o'clock in the morning he was allowed to speak to his wife but even this opportunity to secure comfort and advice was limited by the police to ten minutes (R. 3). At nine o'clock the next morning petitioner was brought before the Court of Quarter Sessions and called upon to answer seven indictments containing numerous counts, charging him and five

other defendants with various degrees of aggravated assault, robbery, burglary and related offenses (R. 30-44).

When petitioner was called to plead, he was not advised of his right to engage counsel. He was given no instruction concerning the nature of the crimes with which he was charged (R. 3). Presumably the indictment was read, although the record does not show; and petitioner pleaded "Guilty" to some charges and "Not Guilty" to others (R. 30, 34, 37, 40, 43, 44). A police officer and one other witness gave a cursory account of the crimes (R. 46-51). The court then examined the criminal record of each defendant and passed sentence. Its lack of concern for petitioner's rights is revealed by the Judge's comments in passing sentence on petitioner (R. 51-52), which were the only remarks directed to him by the court:

"By the Court (addressing Townsend):

Q. Townsend, how old are you?

A. 29.

Q. You have been here before, haven't you?

A. Yes, sir.

Q. 1933, larceny of automobile. 1934, larceny of produce. 1930, larceny of bicycle. 1931, entering to steal and larceny. 1938, entering to steal and larceny in Doylestown. Were you tried up there? No, no. Arrested in Doylestown. That was up on Germantown Avenue, wasn't it? You robbed a paint store.

A. No. That was my brother.

Q. You were tried for it, weren't you?

A. Yes, but I was not guilty.

Q. And 1945, this. 1936, entering to steal and larceny, 1350 Ridge Avenue. Is that your brother too?

A. No.

Q. 1937, receiving stolen goods, a saxophone. What did you want with a saxophone? Didn't hope to play in the prison band then, did you?

The Court: Ten to twenty in the Penitentiary."

On May 15, 1947, petitioner filed an application for a writ of *habeas corpus* (R. 2-6) in the Supreme Court of Pennsylvania in which he described the foregoing events and alleged, although somewhat inexpertly, that he "was at a disadvantage without the assistance of counsel" (R. 6). Neither the warden's answer which set forth the judgment of conviction and order of commitment (R. 7-9) nor the district attorney's answer (R. 10-11) denied petitioner's allegations.

Although *habeas corpus* may not be used as a substitute for an appeal, it is the proper remedy under Pennsylvania law for attacking a sentence passed in violation of a fundamental or constitutional right. *Commonwealth ex rel. Schultz* v. *Smith*, 139 Pa. Super. 357, cited with approval in *Commonwealth ex rel. Penland* v. *Ashe*, 341 Pa. 337, 341-342; cf. *Commonwealth ex rel. McGlinn* v. *Smith*, 344 Pa. 41. There is no suggestion that the petition was procedurally deficient in the instant case. The conclusion is inescapable, therefore, that the Supreme Court of Pennsylvania ruled on the Federal question raised by the application for *habeas corpus*. Thus the petition for certiorari brings petitioner's claim properly before the Court.

Specification of Errors to Be Urged

The Supreme Court of Pennsylvania erred:

1. In failing to hold that under the circumstances set forth in the petition for *habeas corpus*, petitioner was constitutionally entitled to the assignment of counsel.[1]

---

[1] The petition for *habeas corpus* makes the unqualified contention that the Fourteenth Amendment requires the assignment of counsel in all serious cases. We believe, for the reasons hereafter stated that petitioner's case does not depend upon this bald claim, and therefore do not elaborate any argument that *Betts* v. *Brady*, 316 U. S. 455, and *Foster* v. *Illinois*, 332 U. S. 134, should be overruled. In view of the close division of the Court in those cases, however, it seems proper to state expressly that the petitioner's contention that the Fourteenth Amendment requires that assignment of counsel in all criminal cases is not intended to be waived.

2. In failing to hold that under the circumstances set forth in the petition for *habeas corpus*, petitioner was sentenced, in violation of the Fourteenth Amendment, without due process of law.

3. In denying the petition for *habeas corpus*.

Summary of Argument

Petitioner was arraigned and sentenced without due process of law. Due process of law requires a fair opportunity to answer an accusation understandingly. Hence, when the charges are too serious and the potential issues too complex for a layman to comprehend, the State must offer counsel to a defendant, not otherwise protected, at all stages of the proceeding against him. *Williams* v. *Kaiser*, 323 U. S. 471; *Rice* v. *Olson*, 324 U. S. 786. Petitioner had need of such assistance. The charges were too numerous and complex for petitioner as a layman to understand the different accusations, discriminate between them, appraise the possible defenses, and then reach an intelligent judgment concerning his guilt or innocence with respect to each charge.

The fundamental unfairness of the proceeding was aggravated by the misconduct of the prosecuting officials. After petitioner's arrest, during the critical time when an ingredient of unfairness may enter which will taint the entire course of a proceeding, the Philadelphia police held petitioner unlawfully without bringing him before a magistrate, and for approximately 30 hours would not permit him "to contact anyone" (R. 3). The next morning he was arraigned and sentenced. Thus, petitioner had no opportunity to study the charges or to obtain comfort or advice. The bewilderment and despair engendered by this mistreatment would have destroyed whatever opportunity he might otherwise have had to prepare an understanding answer to the accusations against him.

The trial court did nothing to assure petitioner the substance of a hearing. The court gave him no instructions concerning the charges nor his constitutional rights. In short, on accusations impossible for a layman to meet unaided, petitioner was rushed from arrest to confinement without interruption and without opportunity for guidance or advice.

The conviction and sentence are therefore void.

ARGUMENT

I

Petitioner Was Arraigned and Sentenced Without Due Process of Law

The "due process of law" which the Fourteenth Amendment secures to every person charged with crime requires this Court, when its jurisdiction is properly invoked, to review the whole course of the State proceedings to see if they violated any "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" (*Palko* v. *Connecticut*, 302 U. S. 319, 327). And although a majority of the Court has been unwilling to subsume under the Fourteenth Amendment all the specific guarantees of the Bill of Rights (*Adamson* v. *California*, 332 U. S. 46, *Foster* v. *Illinois*, 332 U. S. 134), the course of decision here defines with no little particularity the canons of decency and fairness by which the conduct of State proceedings may be judged. Chief among them is the right to "the substance of a hearing" (*Palko* v. *Connecticut, supra*). A State is required to give the defendant an opportunity to meet the accusation against him. A formal hearing is not sufficient; the opportunity to answer must be real. Moreover, in reviewing a conviction alleged to result from denial of this fundamental right,

this Court will not confine itself to the judicial proceeding but will scrutinize the prior conduct of the State authorities in dealing with the petitioner to ascertain whether it vitiated a proceeding which was formally correct. *Frank* v. *Mangum*, 237 U. S. 309, 327; *Smith* v. *O'Grady*, 312 U. S. 329; *Mooney* v. *Holohan*, 294 U. S. 103; *Carter* v. *Illinois*, 329 U. S. 173, 175; cf. *von Moltke* v. *Gillies*, No. 73, this Term; *Brown* v. *Mississippi*, 297 U. S. 278; *Maliniski* v. *New York*, 324 U. S. 401.

The principle that every person charged with crime has a constitutional right to the substance of a hearing has found numerous applications in the decisions of the Court. In *Frank* v. *Mangum*, 237 U. S. 309, it was recognized that if a trial is dominated by the fear of mob violence so that there is an actual interference with the course of justice, there is a departure from due process of law. *Moore* v. *Dempsey*, 261 U. S. 86, reaffirmed that holding in a case in which legal forms were observed but where, according to the prisoner's allegations, the whole proceeding was a mask because counsel, jury and judge were swept to the fatal end by an irresistible wave of public passion; the Court held that upon proof of the allegations, the conviction would be set aside. Both decisions rest upon the ground that petitioner was denied a genuine opportunity to meet the charge against him.

Mooney v. *Holohan*, 294 U. S. 103, shows the principle in another aspect. The petitioner was convicted by the deliberate use of perjured testimony. The Court held that the demands of due process could not be satisfied by mere notice and hearing "if a State has contrived a conviction through a pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured" (294 U. S. at 112).

Compare *Smith* v. *O'Grady*, 312 U. S. 329. Again the hearing was not real.

These illustrations help to place in their proper perspective the claims of denial of a constitutional right to counsel which are being pressed with increasing frequency by applications for *habeas corpus*. A hearing is a sham when the accused cannot meet the charge because he cannot comprehend it or cannot intelligently manage his defense. Consequently the canons of decency and fairness which are essential to due process impose upon a State the duty to take whatever measures are necessary under the circumstances of the particular case to ensure that the defendant understands the charge and has a fair opportunity intelligently to prepare and present his answer. It will not be suggested that a State is not required to give aid to a defendant in bringing his witnesses before the court, or to supply an interpreter to a defendant who does not know the language in which the proceedings are conducted. Such assistance is essential to the substance of a hearing. In other cases an explanation of the meaning of the accusations, of the ingredients of the offenses and of the defenses potentially available may be equally indispensable. This principle has never been questioned despite differences in opinion as to whether, in view of the complexities of criminal proceedings, the State should not be required to offer to assign counsel in all serious criminal cases. Thus, the Court has held that when a serious crime is charged and the defendant is incapable of conducting his own defense, due process is not satisfied by anything less than the assignment of counsel. *Powell* v. *Alabama*, 287 U. S. 45; *Rice* v. *Olson*, 324 U. S. 786; *De Meerleer* v. *Michigan*, 329 U. S. 663. The need may exist whether the accused stands trial or pleads guilty. *Williams* v. *Kaiser*, 323 U. S. 471; *Rice* v. *Olson*, *supra*; *Foster* v. *Illinois*, 332 U. S. 134,

137. The personal qualifications of the accused, the seriousness of the charge, and the complexity of the potential issues are relevant circumstances. Likewise, the conduct of the prosecuting officials may be decisive. Cf. *Smith* v. *O'Grady*, 312 U. S. 329. Summarizing its early decisions the Court said in *White* v. *Ragen*, 324 U. S. 760, 763—

> We have many times repeated that not only does due process require that a defendant on trial upon a serious criminal charge and unable to defend himself shall have the benefit of counsel . . .

Other decisions suggest that in appropriate cases the States may refrain from offering the assignment of counsel and delegate to the trial judge the responsibility of safeguarding the interests of the accused by giving him the legal advice and assistance necessary to a fair hearing. See *e.g.*, *Betts* v. *Brady*, 316 U. S. 455, 470-472; cf. *Foster* v. *Illinois*, 332 U. S. 134. But although the Fourteenth Amendment does not establish a rigid procedure binding the States to proffer counsel in all cases, its guarantee of due process of law, requires a State, by one appropriate means or another, to give every person charged with crime whatever guidance is necessary to a fair opportunity to answer the accusations. Nothing less meets the bare requirement of "the substance of a hearing."

When petitioner was arraigned, these essential safeguards were omitted. He was called upon to plead to seven voluminous indictments charging serious offenses. The number of charges, the nice distinctions and the legal verbiage would bewilder any layman; it also appears that there were several defenses the potential availability of which only a lawyer would appreciate. When defendant was required to answer these charges, alone and unaided, he had been unlawfully shut off from advice and assistance and subjected to the psychological pressures of being held

incommunicado for all but ten minutes of the forty hours intervening between his arrest and arraignment (R. 3). In court, "he was not advised of his right to engage counsel, nor was he instructed of the particular offenses" which the indictments charged (R. 3). The court's attitude was not one of solicitude to assure the fairness of the hearing. On the contrary its chief concern appears to have been (R. 52):

> "• • • What did you want with a saxophone? Didn't hope to play in the prison band then, did you?
> "Ten to twenty in the Penitentiary."

Thus petitioner's case does not depend upon the bald claim that because the record does not disclose an offer of counsel upon his plea of guilty, he was denied due process of law. The fundamental unfairness which vitiates the sentence under which he is held resulted from the concurrence of three factors: (A) the complexity of the accusations; (B) the misconduct of the police; and (C) the indifference of the trial court towards petitioner's rights. Elaboration of petitioner's need for counsel or some equivalent assistance under these circumstances would seem to be unnecessary but, out of caution, it may be appropriate to call attention to the difficulties that confronted him in more detail.

A. *The charges against petitioner were of such complexity as to make informed guidance essential to an understanding answer.*

When petitioner was brought before the Court of Quarter Sessions, he was called upon to plead to seven indictments charging him with twenty different offenses. Indictment No. 691 charged improper possession of a firearm (R. 30-31). Indictment No. 696 contained six different counts all based upon the alleged robbery of Wade Mitchell: (1) assault with an offensive weapon, with intent to rob (R.

31); (2) assault with other persons, with intent to rob (R. 31); (3) robbery being armed with an offensive weapon (R. 32); (4) robbery together with other persons (R. 32-33); (5) robbery, and at the commission thereof beating, striking and ill-using (R. 33); and (6) committing a crime of violence while armed with a firearm (R. 33). Indictment No. 701 referred to the same events but charged the additional crime of burglary (R. 43-44). Indictments Nos. 698 and 699 were based upon the attempted robbery of the Yellow Cab Company, and again the pleader alleged seven different offenses in legal phrases requiring legal training to discriminate between the counts (R. 38-42). Indictments Nos. 697 and 700 (R. 35, 42), on which petitioner was later found not guilty, relate to another robbery.

Argument is scarcely necessary to demonstrate that merely upon hearing them read aloud a layman could not plead intelligently to these seven indictments, embracing twenty distinct offenses. At the very most he might realize, as petitioner apparently knew, that he was charged with improper possession of a firearm and complicity in three "hold-ups." He might distinguish, as petitioner apparently distinguished, between the "hold-ups" with which he had some connection and those with which he had none. But beyond this point petitioner was helpless. He could not know that Indictments Nos. 696 and 698 each charged him with six distinct crimes, that each crime contained its own peculiar ingredients, and that different defenses might be available to each. Ignorant of these legal niceties petitioner could not truly comprehend the different offenses, discriminate between them, and then reach an intelligent judgment concerning his guilt or innocence with respect to each charge. Hence even if we assume that because petitioner distinguished between different indictments in entering his pleas, he must have known that he had committed a crime, we cannot tell the degree of prejudice caused by the absence

of counsel. Cf. *Glasser* v. *United States*, 315 U. S. 60, 75-76. Only counsel, after a thorough study of the relevant facts could determine the counts to which a plea of not guilty was appropriate and those on which petitioner might be guilty of a lesser included offense. But while proof of prejudice is not essential (*Williams* v. *Kaiser*, 323 U. S. 471, 475-476, 479 n. 7), it is plain from this record that there were important issues which petitioner could not appreciate but which experienced counsel have explored before advising him how to plead.

1. Indictments Nos. 696 and 698 charged (a) assault being armed with an offensive weapon (R. 31, 38), (b) robbery being armed with an offensive weapon (R. 32, 38-39), and (c) committing a crime of violence while armed with a firearm (R. 33, 40). Both indictments alleged that there were a number of participants in the robberies and, although the question is arguable, it is probable that the prosecution's case would be made out under charges (a) and (b) by showing that any one of them was armed. *People* v. *Byrnes*, 302 Ill. 407; *People* v. *Paradiso*, 248 N. Y. 123. Such proof would not sustain a conviction, however, under (c), the count for committing a crime of violence while armed with a firearm. *People* v. *Paradiso*, *supra*. We cannot tell on which theory the commonwealth proceeded against petitioner nor whether petitioner was armed, but it requires no stretch of the imagination to suppose that the commonwealth was proceeding on the erroneous theory advanced by the State in *People* v. *Paradiso*, *supra*, and petitioner was not armed. Petitioner cannot be supposed to have realized the importance of the question. We submit that it was fundamentally unfair not to grant him an opportunity to be advised concerning a defense into which he could not, but an attorney would surely, have inquired.

2. Both Indictment No. 696 and Indictment No. 698 charged assault being armed with an "offensive weapon" and robbery being armed with an "offensive weapon" (R. 31, 32, 38, 39). An attorney assigned to defend the accused would have inquired about the weapon used in the robbery and a defense, not apparent to the accused, might have been predicated upon the point. Even if it is assumed that the accused was armed with a firearm, the issue is not clear. The Pennsylvania courts apparently have not decided whether an *unloaded* firearm is an "offensive weapon." Other jurisdictions have consistently held, however, that an unloaded gun is not a "dangerous" or "deadly" weapon (*Price* v. *United States*, 156 Fed. 950, 952; *People* v. *Sylva*, 143 Cal. 62; *People* v. *Tremaine*, 129 Misc. 650; Anno. 74 A. L. R. 1206), and such decisions might well have been regarded as controlling on the question whether petitioner and his co-defendants carried an "offensive" weapon. Similarly, it has been held, although the weight of authority may be to the contrary, that robbery with an unloaded gun is not robbery "being armed with a dangerous weapon." *Luitze* v. *State*, 204 Wisc. 78. It does not tax one's credulity to assume that the gun used in these robberies was unloaded, and that Pennsylvania might have followed the Wisconsin rule. The most serious charges against petitioner, therefore, may well have been unfounded; yet petitioner, because he could not know the importance of the point, was denied the opportunity to raise it.

3. Indictments Nos. 700 and 701 charged petitioner with burglary (R. 42-44). Both indictments appear to have been laid under P. L. 872, § 901, of the Laws of 1939 which provides—

> Whoever, at any time, wilfully and maliciously, enters any building, with intent to commit any felony therein is guilty of burglary * * *.

Section 901 is a codification of P. L. 382, § 135, of the laws of 1860, P. L. 531, § 2, of the Laws of 1863 and P. L. 49, § 1, of the Laws of 1901. Under the earlier statutes proof of entry was not sufficient; an actual or constructive breaking was part of the offense. *Roland* v. *Commonwealth*, 82 Pa. 306, 323, 325-327; *Johnston* v. *Commonwealth*, 85 Pa. 54, 57; *Commonwealth* v. *Shawell*, 29 Berks 124, 126. As a partial codification of the Pennsylvania criminal statutes, P. L. 872 is "a revision and consolidation for clearness, certainty and convenience of all the prior statutes on the subject, a partial codification to the purpose of which amendment or change was only incidental" (*Bell* v. *Abraham*, 343 Pa. 169, 173). Hence the Pennsylvania courts, when confronted with so novel a definition of the familiar offense of burglary, might well look beyond the bare words, examine the legislative development of the statute and conclude that despite the change in phraseology that the reenactment did not dispense with any of the former ingredients of the offense.[2] Under such circumstances an experienced criminal lawyer assigned to defend the petitioner would certainly have inquired into the circumstances under which petitioner entered the two buildings in question. He might well have established a successful defense to either or both indictments, or have induced the court to accept a plea to a lesser included offense, by showing that there was neither an actual nor a constructive breaking.

4. A careful study of the evidence in the record concerning the robbery of Wade Mitchell (Indictments Nos. 696 and 701) suggests that an experienced attorney would have advised petitioner to plead not guilty to several, if not all, of the seven charges. Mitchell and Detective Lane were

---

[2] Counsel are informed that this codification was not prepared by a legislative commission but by an individual member of the Bar Association.

called as witnesses to describe the crimes for the judge's guidance in passing sentence. Mitchell testified that two men robbed him (R. 49) but was able to identify only the defendant Cain (R. 49). Detective Lane told the court that petitioner participated in the crime (R. 47) but neither disclosed the basis for his assertion nor described the extent of petitioner's complicity. The two statements attributed by Detective Lane to petitioner's co-defendants identified only Joe Kopitsko, Charley Cain and Eddy Keenan (R. 48). Like Mitchell's testimony these statements made it plain that only two men, Cain and Keenan, entered the garage. Thus the record strongly suggests that there was very little, if any, evidence of Townsend's participation in the robbery. And even if we are to infer from his plea of guilty that he had some connection with the men who did rob Mitchell, it is not fair to infer from the uninstructed answer of a layman that the connection was close enough to make him principal in the offenses charged. Only an experienced attorney with all the evidence before him could tell whether what might have seemed to petitioner to be complicity was too tenuous a connection to make him guilty of the crime.

5. Finally, there is a great probability that an attorney could have rendered real assistance to petitioner when sentence was imposed. At that stage in a proceeding it is customary to hear whatever can be said in mitigation, whether based upon the minor role of the accused in the offenses charged or upon his prior conduct, background, character and peculiar circumstances. An attorney could marshal the relevant facts and bring them to the court's attention. See Brief for Petitioner in *Gryger* v. *Burke, Warden*, No. 541, this Term. Petitioner had no such skill and appears to have been given no such opportunity. Moreover, when the normal rules of evidence are not followed in imposing sentence, trained assistance becomes the more

important. For example, Detective Lane included in his recital a description of various crimes which he said petitioner had committed on March 18, 1945 (R. 47). These charges were not embraced in any of the indictments before the court. Later, when Detective Lane started to describe an offense said to have been committed on April 29 by some of petitioner's co-defendants (R. 48), the court observed that the matter was not properly before it because it was not covered by any of the indictments. The court apparently failed to observe, however, that the same mistake had already been made with respect to petitioner. In view of the latitude permissible in receiving evidence on the sentence to be imposed, we do not suggest that the description of other offenses was improperly brought before the court, nor can we tell whether prejudice resulted from taking Detective Lane's one-sided account into consideration. It is clear, however, that petitioner was treated differently from his co-defendants, and that if counsel had been present, he would have protected Townsend against the dangers inherent in giving weight to such accusations while the proper punishment was being weighed. As petitioner points out (R. 6), the disadvantage which he suffered "is evidenced by the fact that one of the defendants with whom petitioner was tried had an attorney and, in turn received a much lighter sentence than the one your petitioner received." (Compare R. 52 and R. 53-54.)

In this proceeding there is no occasion to pass judgment upon the merits of the potential defenses outlined above. Upon investigation they might have been found to lack merit, or the facts might have suggested others. Their importance in this case is that they illustrate in some detail the inadequacies of the hearing which petitioner received. Thus, what was said in *Powell* v. *Alabama*, is applicable here:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged

> with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.

Those observations "are as pertinent in connection with the accused's plea as they are in the conduct of a Trial" (*Williams* v. *Kaiser*, 323 U. S. 471, 475).

In sum, we rest our contentions on this branch of the case on two propositions. First, due process of law requires a State to offer counsel to an indigent defendant not otherwise protected whenever the charges are too serious and the potential issues too complex to permit a fair opportunity to answer without legal advice. Second, in the instant case, although petitioner required such assistance a' quately to answer the accusations with which he was confronted, the police held him incommunicado, no offer of counsel was tendered and no care for his protection was taken by the court.

Williams v. *Kaiser*, 323 U. S. 471, is controlling on both branches of the argument. In that case the Court held that the "rule of *Powell* v. *Alabama*" would be applicable if Williams established his allegation that he was required to plead to a charge of robbery by means of a deadly weapon without the assistance of counsel although he "was incapable adequately of making his own defense" (No. 102, October Term 1944, Record, p. 2). In the instant case the

chief charges against petitioner were the same as those leveled against Williams; indeed petitioner's difficulties were the greater, if anything, because of the multiplicity of counts and the nice distinctions between them. Petitioner's need for counsel was no less than Williams's. Neither petitioner nor Williams appears to have had either greater or less ability to defend himself than the average person charged with crime. Each needed the aid of counsel lest he become the victim of overzealous prosecutors, of the law's complexity, or of his own ignorance or bewilderment.

The minor factual differences between the two cases are plainly irrelevant. No valid argument can be predicated on the fact that in Williams's case a death sentence was possible while in petitioner's case the maximum sentence would result in imprisonment for the rest of his life. *Rice* v. *Olson*, 324 U. S. 786; See *Canizio* v. *New York*, 327 U. S. 82, 85. Nor can a distinction be predicated upon the difference in the allegations with respect to the ability of the accused to represent himself. Each prisoner suffered from the layman's inability to meet a complicated indictment without some guidance by one experienced in the law. Williams asserted that he "was incapable adequately of making his own defense." Petitioner alleged that he was not "instructed of the particular offenses covering Bills # 696, 698, 699 and 701, May Sessions, 1945" (R. 3) and referred, albeit obliquely, to the fact that "your petitioner was at a disadvantage without the assistance of counsel" (R. 6). Thus Williams stated the conclusion to be drawn from the circumstances of his case whereas petitioner's averments call attention to the omission of instructions concerning the accusations and then suggest proof of the resulting prejudice. The difference is immaterial. For although a conviction of crime is not to be impeached lightly, petitions for *habeas corpus* asserting a denial of the fundamental prin-

ciples of justice are not to be read with all the nicety of common law pleadings. "• • • we can hardly demand of a layman and pauper who draws his petition behind prison walls the skill of one trained in the law. • • • A deprivation of the constitutional right of counsel should not be readily inferred from vague allegations. But where the substance of the claim is clear, we should not insist upon more refined allegations than paupers, ignorant of their right of counsel and incapable of making their defense, could be expected to supply." (*Tomkins* v. *Missouri*, 323 U. S. 485, 487). Petitioner's allegations, thus read, are plainly sufficient to entitle him to a hearing at which his need for counsel may be examined in more detail.

It is equally irrelevant that the prisoner in *Williams* v. *Kaiser* alleged that his request for the assistance of counsel had been denied. In the companion case of *Tomkins* v. *Missouri*, 323 U. S. 485, in which no such request had been made, the Court held that "one who was not represented by counsel, who did not waive his right to counsel and who was ignorant of his right to demand counsel is one of the class which the rule of *Powell* v. *Alabama* was designed to protect" (p. 488). See also *Rice* v. *Olson*, 324 U. S. 786, 788-789; compare *Johnson* v. *Zerbst*, 304 U. S. 458. Petitioner's allegations that he did not know of (R. 6), and was given no instruction concerning, his right to counsel (R. 3, 6) bring him within the same group. In short, the present case falls squarely within the "rule of *Powell* v. *Alabama*" as applied in *Williams* v. *Kaiser* and similar cases.[3]

[3] In *Rice* v. *Olson*, 324 U. S. 786, an Indian had pleaded guilty to an indictment for burglary and was sentenced, on a plea of guilty, to from one to seven years. The defendant had not been represented by counsel. The Court held the sentence void, saying pp. 788-789—"A defendant who pleads guilty is entitled to the benefit of counsel, and a request for counsel is not necessary. It is enough that a defendant charged with an offense of this character is incapable adequately of making his defense, that he is

Petitioner's case, however, does not rest exclusively upon the ground that a State has a duty to offer counsel to an indigent defendant, or to afford him guidance in another appropriate manner, whenever the indictment potentially raises questions of law which a layman would not understand. Immediately after the arrest, during the critical time when an ingredient of unfairness may enter which will taint the entire course of a crimial proceeding, the Philadelphia police held petitioner unlawfully without bringing him before a magistrate, and for approximately 30 hours refused to permit him "to contact anyone" (R. 3). When petitioner finally was brought before the court, he was not warned of his rights nor instructed concerning the crimes with which he was charged (R. 3). These circumstances are to be weighed together with petitioner's lack of counsel in ascertaining the fairness of the proceeding. They distinguish such cases as *Bute* v. *Illinois*, No. 398, this Term, as well as *Betts* v. *Brady*, 316 U. S. 455 and *Foster* v. *Illinois*, 332 U. S. 134. We turn, therefore, to examine the conduct of the police authorities and the trial judge in more detail.

---

unable to get counsel, and that he does not intelligently and understandingly waive counsel."

In *White* v. *Ragen*, 324 U. S. 760, 763-764, the Court observed—"We have many times repeated that not only does due process require that a defendant, on trial in a State court upon a serious criminal charge and unable to defend himself, shall have the benefit of counsel. • • •"

In *Canizio* v. *New York*, 327 U. S. 82, the prisoner's papers alleged that when he was nineteen and unfamiliar with legal proceedings, he was sentenced for armed robbery without counsel being offered or requested. The Court said (p. 85)—"• • • had there been nothing to contradict petitioner's general allegation that he was not represented by counsel in the interim between his plea of guilty and the time he was sentenced, his charges would have been such as to have required the court to hold a hearing on his motion."

B. *The misconduct of the State authorities increased petitioner's need for the assistance of counsel.*

The Pennsylvania statutes explicitly provide that "In all case of arrest made by any police officer or constable of the city of Philadelphia * * *, it shall be the duty of the police officer or constable making such arrest to take the person arrested for a hearing to the office of the alderman or magistrate nearest to the place where the arrest was made * * *." Purdon's Penna. Stat., Tit. 53, §6558; cf. *id.*, Tit. 19, § 3. In order to facilitate the administration of this requirement of criminal justice the Magistrates' Court Act of 1937 establishes divisional police courts at ten or more police stations and a central police court in session during the entire twenty-four hours of each day. *Id.*, Tit. 42, §§ 1110-1111. Nevertheless the Philadelphia police disregarded this statutory duty. For thirty hours after petitioner's arrest on June 3, the Philadelphia police not only detained him unlawfully, without bringing him before a magistrate but they shunted him from police station to police station for questioning and denied him the opportunity to communicate with his family or friends. Only at two o'clock in the morning was he allowed to speak to his wife "for a period not exceeding ten (10) minutes." The next morning he was called upon to enter his plea. (R. 3)

Such conduct on the part of police officials is not merely a departure from formal routine. Some years ago the Law Association of Philadelphia reported, after a survey of the administration of criminal law in that city, that "the private or secret interrogation of arrested persons prior to indictment, or after indictment and prior to trial, has become common practice and in many cases the foundation of scandal, harsh criticism and judicial condemnation. * * * The secrecy with which such inquires are conducted,

the ignorance of the prisoner of his rights, the harsh and frequently cruel methods applied, and the great burden placed on a defendant in convincing a jury that a confession, admission or statement of alleged information were such as exclude them from consideration, are all grave dangers in the practictal use of the system." See American Law Institute Code of Criminal Procedure (1930), p. 64. The Pennsylvania statutes requiring the police to bring an arrested person promptly before a magistrate are designed to protect men against these dangers. The same procedural requirement, as this Court pointed out in *McNabb* case, pervades the criminal procedure of nearly all the States. *McNabb* v. *United States*, 318 U. S. 332, 342-343. It checks resort "to those reprehensible practices known as the 'third degree' which, although universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime. * * * The history of liberty has largely been the history of observance of procedural safeguards" (*Ibid*, pp. 344, 347).

Such serious misconduct on the part of the police is surely relevant in determining whether as a result of the court's failure to offer petitioner legal assistance an element of fundamental unfairness operated in the process which resulted in his confinement. When the police respect the basic safeguards of criminal procedure, the defendant is brought before a magistrate promptly upon his arrest, informed of the charges against him, given time to consider his predicament and afforded an opportunity for consultation with his family or friends. Thereafter a careful judge, before accepting a plea, would assure himself that the defendant understood the charges, his right to a trial and the consequences of pleading guilty. Where those safeguards are observed, it is possible that the voluntary entry

of a plea of guilty without a request for the assistance of counsel is to be taken as evidence that the accused felt no unfairness in being called upon to answer the indictment without legal advice. Cf. *Foster* v. *Illinois*, 332 U. S. 134. But compare *Tomkins* v. *Missouri*, 323 U. S. 471; *Johnson* v. *Zerbst*, 304 U. S. 458. That question is not present here, however, for in petitioner's case all those safeguards were omitted. Petitioner was not given a hearing before a magistrate and formally charged with the crimes (R. 3). Except for a brief talk with his wife at two o'clock in the morning, he was "deprived of his right to contact anyone" (R. 3). During much of this period he was subjected to questioning. Thus, he had no opportunity to study the charges, to obtain comfort and guidance, and to form a judgment after mature consideration as to the course he should follow. Nor did the trial court instruct him concerning the offenses and inform him of his rights. Without guidance of any kind he was "arrested, placed on trial, sentenced and delivered to the Eastern State Penitentiary all within a period of *less than* forty-eight (48) hours" (R. 3).

It needs no argument to demonstrate that this conduct of the part of the State officials was calculated to rush petitioner in a state of helplessness, confusion and despondency into acquiescence with the prosecution's will. In *Haley* v. *Ohio*, 332 U. S. 596 a majority of the Court set aside for denial of due process of law a conviction based upon a confession obtained by secret questioning while the defendant was held incommunicado. Four justices declared, "The Fourteenth Amendment prohibits the police from using the private secret custody of either man or child as a device for wringing confessions from them" (p. 601). The concurring opinion called attention to "the inevitable disquietude and fears police interrogations na-

turally engender in individuals questioned while held incommunicado, without the aid of counsel and unprotected by the safeguards of a judicial inquiry" (p. 605). The Wickersham Commission also found that when prisoners were held incommunicado with no word from their families and no opportunity for legal advice, the "long periods of lonely suspense may well lead an innocent man to admit guilt, even if no third-degree practices in the strict sense are employed." National Commission on Law Observance and Enforcement, Report on Lawlessness in Law Enforcement, 167-168. And it is to prevent such unfairness that a Royal Commission on Police Powers and Procedure recommended in 1929, that—

> A rigid instruction should be issued to the Police that no questioning of a prisoner, or a "person in custody," about crime or offense with which he is, or may be, charged, should be permitted.[4]
>
> • • • • • • •
>
> All persons in custody, on arrival at the Police Station, should be allowed facilities to consult with their legal advisors, and also their friends except when the interests of justice forbid.[5]

On the present record it cannot be assumed that the harassment and psychological pressures to which petitioner was subjected were inoperative when petitioner answered the indictment. He was rushed from arrest to confinement without interruption. The bewilderment and despair thus engendered would destroy whatever opportunity petitioner might otherwise have had to prepare an understanding answer to the accusations against him. As a layman he was not equipped, even under the most favorable circumstances,

---

[4] Report of the Royal Commission on Police Powers and Procedure (London, 1929), p. 118.

[5] *Id.*, p. 119.

to comprehend the different charges in the indictments or to appreciate the available lines of defense. It would be remarkable if, after being held incommunicado by the police for forty hours much of which were given over to questioning, he was able to penetrate the legal verbiage to the substance of the charge.

For the same reason petitioner's failure to request counsel does not imply that he was satisfied to plead guilty without legal advice. He did not know of his right to counsel (R. 6). Excepting a ten minute period, he had unlawfully been held incommunicado ever since his arrest (R. 3). The judge showed no concern for his protection (R. 3, 52-53). On these uncontradicted allegations, petitioner's failure to protest the unfairness of the proceedings must be attributed to the despair resulting from helplessness rather than to the absence of a "felt need of counsel" (*Foster* v. *Illinois*, 332 U. S. 134, 138). *Tomkins* v. *Missouri*, 323 U. S. 485.

C. *The trial court omitted any measures which might have protected petitioner against unfairness.*

The unfairness which operated against petitioner from his arrest until his sentence and commitment was multiplied by the character of the only hearing which he received. His petition for *habeas corpus* sets forth without contradiction that he "was never given a hearing before a City Magistrate" and when he was arraigned in Court of Quarter Sessions "he was not advised of his right to engage counsel, nor was he instructed of the particular offenses covering Bills # 696, 698, 699 and 701" (R. 3). The transcript certified by the official stenographer and approved by the presiding judge as a full and accurate statement of the proceedings (R. 54) shows no solicitude for fairness to the

accused. In substance the court's remarks to petitioner were confined to this comment (R. 51-52)—

> Q. 1937, receiving stolen goods, a saxophone. What did you want with a saxophone? Didn't hope to play in the prison band then, did you?
>
> The Court: Ten to twenty in the Penitentiary.

The course of decision here has established the rule that the Fourteenth Amendment leaves the States the freest possible scope in the choice of criminal procedures so long as the procedure adopted is not in conflict with deep-rooted traditions of justice. *Snyder* v. *Massachusetts*, 291 U. S. 97; *Palko* v. *Connecticut*, 302 U. S. 319; *Malinski* v. *New York*, 324 U. S. 401, 412; *Adamson* v. *California*, 332 U. S. 46, 59. Accordingly, there may be some latitude, even where legal advice is necessary to the substance of a hearing, for the State to choose between alternative methods of giving this indispensable assistance. In many cases the judge's watchful guidance may be sufficient. Under the English practice which lies beneath the colonial laws relied upon in *Betts* v. *Brady*, 316 U. S. 455, it was the judge's duty to secure the interests of the accused. Thus Blackstone noted, while discussing arraignment and pleas, that "the judges of the court * * * are to be of counsel for the prisoner, and to see that he hath law and justice." 4 Bl. Comm. *324; see also 1 Cooley's Const. Lin. (8th ed.), 698 *et seq.* *Betts* v. *Brady*, *supra*, permitted Maryland to follow this procedure in a case which raised a simple question of fact, but the Court was careful to point out that the Maryland judges were always solicitors for the interests of defendants who lacked counsel and would make an appointment if serious disadvantage appeared (pp. 472-473).[6] In *Foster* v.

---

[6] Judge Bond's description of the Maryland practice was as follows (Record, p. 29):

"That every presiding judge will care for the interests of a defendant in every case if he is without counsel is, as argued, doubtless illusory. The

Illinois, 332 U. S. 134, the Court reaffirmed the earlier decision, holding that the failure of the common law record to disclose an offer of counsel did not establish that the trial was fundamentally unfair. Foster, like Betts, based his case upon the bald assertion that only by the appointment of counsel could a fair hearing be secured; and the Court's decision denying the claim rests, as we read the opinions, upon the care which the trial court appeared to have exercised to safeguard the interests of the accused. In the Brief for the Petitioner in *Gregger* v. *Burke, Warden*, we have considered some of the limitations on this procedure, but no such question is raised in the instant case because the judge made no effort "to be of counsel for the prisoner and to see that he hath law and justice" (4 Bl. Comm. *324).

Conclusion

Unlike the arguments presented in *Betts* v. *Brady* and *Foster* v. *Illinois*, petitioner's case does not depend upon the claim that counsel must be appointed in all serious criminal cases, nor does it attack the validity of all sentences passed upon pleas of guilty without counsel being offered or requested. We contend only that when a defendant has been accused of crimes which he cannot comprehend sufficiently to make an intelligent response alone and unaided—when he has been subjected to all the confusion and despair engendered by unlawful confinement, shut off from friends and counsel—due process of law requires the State to adopt some measure sufficient to give him a real understanding of

---

argument that he can never do so is perhaps logical, but not always true, I think. I have been struck by the care exercised even by prosecuting [fol. 39] attorneys for the interests of prisoners who have had no counsel, at least so far as eliciting the truth in their favor has been concerned. Trials without counsel are less contentious, and especially when trial without jury is elected, as is usual in Maryland, are more informal. Certainly my own experience in criminal trials over which I have presided has demonstrated to me that there are fair trials without counsel employed for the prisoners."

the charges and the potential defenses, and of the courses of conduct which he may follow. The procedure to be selected is for the State to determine; the measures adopted may include an offer of counsel or, in appropriate cases, an impartial inquiry by a fair-minded judge. The fundamental unfairness that vitiates petitioner's conviction is the failure of the commonwealth to adopt any measure suited to assuring petitioner an opportunity to comprehend and answer the accusations. The whole course of the proceedings was calculated to rush petitioner to the penitentiary without a real opportunity to make his defense. The indictments charged offenses involving nice legal distinctions to which important defenses may well have been available but at the existence of which petitioner, as a layman, could scarcely guess. The prosecuting officials, through indifference or overzealousness, detained him unlawfully isolated from family and friends. The court neither explained the offenses nor advised him of his constitutional rights, although he was ignorant thereof, nor took other steps to give him a fair opportunity to understand and answer the accusations. Under all the circumstances it is plain that petitioner did not have the substance of a hearing, and was sentenced to the penitentiary without "due process of law."

Therefore the judgment of the Supreme Court of Pennsylvania should be reversed and the case remanded.

Respectfully submitted.

ARCHIBALD COX.

April, 1948.

FILE COPY
No. 542

IN THE

Supreme Court of the United States

October Term, 1947. ~~66 Miscellaneous~~

COMMONWEALTH OF PENNSYLVANIA ex rel.
FRANK TOWNSEND,

v.

C. J. BURKE, WARDEN EASTERN STATE PENITENTIARY, PHILADELPHIA, PENNSYLVANIA.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

JOHN H. MAURER,
District Attorney,
606 City Hall,
Philadelphia, Pennsylvania,
Attorney for Respondent.

Martin & Lyle, 610 Walnut Bldg., Phila. 2, Pa.

INDEX

CITATIONS

ANSWER OF JOHN H. MAURER, DISTRICT ATTORNEY, TO PETITION OF FRANK TOWNSEND FOR WRIT OF CERTIORARI.

The defendant was indicted by the Grand Jury in and for the County of Philadelphia, Commonwealth of Pennsylvania, on June 1, 1945, with other defendants, on the following bills of indictment as of May Sessions, 1945:

No. 696, Armed Robbery—Plead Guilty
No. 697, Armed Robbery—Plead Not Guilty—Acquitted
No. 698, Attempted Armed Robbery—Plead Guilty
No. 699, Burglary with intent to rob—Plead Guilty
No. 700, Burglary with intent to rob—Plead Not Guilty—Acquitted
No. 701, Burglary with intent to rob—Plead Guilty.

He was sentenced on Bill No. 698 under the provisions of the Act of Assembly of June 24, 1939, P. L. 872, Section 705, 18 P. S. §4705, which provides:

> "Whoever, being armed with an offensive weapon or instrument, robs or assaults with intent to rob another; or, together with one or more persons, robs or assaults with intent to rob; * * * shall be sentenced to pay a fine not exceeding ten thousand dollars ($10,000) or undergo imprisonment, by separate or solitary confinement at labor, not exceeding twenty (20) years, or both."

He was sentenced by the Honorable Harry S. McDevitt, presiding judge, to ten to twenty years in Eastern State Penitentiary to be computed from June 5, 1945.

The defendant was indicted by the Grand Jury in and for the County of Philadelphia, Commonwealth of Pennsylvania, on April 13, 1945, together with Edward Keenan, on Bill No. 300 of April Sessions, 1945, attempted burglary,

to which the defendants originally plead not guilty on June 5, 1945. On October 24, 1945, they changed their pleas to guilty. Defendant Townsend was sentenced by the Honorable James Gay Gordon, Jr., presiding judge, to not less than one month nor more than five years in Eastern State Penitentiary to be computed after the sentence on Bill No. 698 of May Sessions, 1945.

The defendant was indicted by the Grand Jury in and for the County of Philadelphia, Commonwealth of Pennsylvania, on June 1, 1945 on Bill of Indictment No. 691 of May Sessions, 1945 for carrying concealed deadly weapon and carrying a revolver without a license. On June 5, 1945, he plead not guilty, but on October 24, 1945 he changed his plea to guilty. He was sentenced by the Honorable James Gay Gordon, Jr., presiding judge, to one month in Eastern State Penitentiary after sentence on Bill No. 300 of April Sessions, 1945.

The crimes for which the defendant was indicted occurred between March 24 and April 29, 1945. He became a fugitive. Thereupon he was indicted as a fugitive. In order to indict as a fugitive in Pennsylvania, a petition has to be presented to the Court of Quarter Sessions by the District Attorney, stating the fact that the defendant is a fugitive, and asking leave of Court to present the facts to the jury for the purpose of indictment which was done in this case. In such a case, when the defendant is apprehended, he is brought into court and arraigned. If he pleads guilty, the Court may, and generally does, hear the facts and pass sentence as in this case. If he pleads not guilty, arrangements are then made for trial. Under the law of Pennsylvania,

(a) When a defendant pleads guilty there is no requirement that he have counsel to represent him, and

(b) The only time it is obligatory on the Court to appoint counsel is in cases of murder.

Practically two years after he was sentenced, Townsend filed a petition for a writ of habeas corpus in the Supreme

Court of Pennsylvania, to which an answer was filed. The Court, after consideration of the petition and answer, dismissed the petition and refused the writ on May 26, 1947. Thereafter, on July 10, 1947, a petition filed in United States District Court for Eastern District of Pennsylvania, alleging exactly the same facts, was dismissed after hearing by the said Court on July 15, 1947 and no appeal taken.

The defendant Townsend does not claim and never has claimed, that he is innocent. The sentences imposed and which he is serving are in accordance with law.

Your respondent prays that the petition for writ of certiorari be denied, and he will ever pray.

JOHN H. MAURER,
District Attorney of Philadelphia County.

Commonwealth of Pennsylvania }
City and County of Philadelphia }

John H. Maurer, being duly sworn according to law, deposes and says that he is District Attorney of Philadelphia County, and that the facts set forth in the foregoing answer are true and correct according to the best of his knowledge, information and belief.

JOHN H. MAURER.

Sworn to and subscribed before me this 3rd day of November, A. D. 1947.

EDW. H. WHITE, JR.,
(Seal) Notary Public.

My Commission Expires March 9, 1951.

ARGUMENT.

The defendant Townsend claims that the Courts of Pennsylvania are bound to supply a man with counsel when charged with a crime. This is not and never has been the law in Pennsylvania, and is not in accordance with the Constitution of Pennsylvania. The Constitution of Pennsylvania, Article 1, Section 9, provides:

> "In all criminal prosecutions the accused hath the right to be heard by himself and his counsel * * *."

Such a question was raised and fully discussed in *Commonwealth ex rel. McGlinn v. Smith*, 344 Pa. 41. The decisions of the United States Supreme Court and of the Supreme Court of Pennsylvania were considered. On page 48, the Court said:

> "The right guaranteed by the Pennsylvania Constitution (Art. 1, Sec. 9) of an accused to be *"heard by counsel"* has never been challenged or abridged in this Commonwealth; the right of an accused to be *supplied with counsel when none is asked for* was never until recent years asserted in this Commonwealth. This court has never countenanced the idea that the accused in a criminal case when the charge is other than murder is being deprived of a constitutional right if he is not informed in advance of his trial that counsel will be assigned him upon request."

In further discussing the case, the Supreme Court of Pennsylvania held that during two and a half centuries of its existence it had never been held "the duty of trial courts to provide (except in capital cases) counsel for accused persons where none was asked for * * *."

Referring to the decisions of the Supreme Court of the

United States, the interpretation of the highest court of the State must always be given consideration.

In the McGlinn case, the defendant went to trial before a jury without counsel, testified in his own behalf and was convicted.

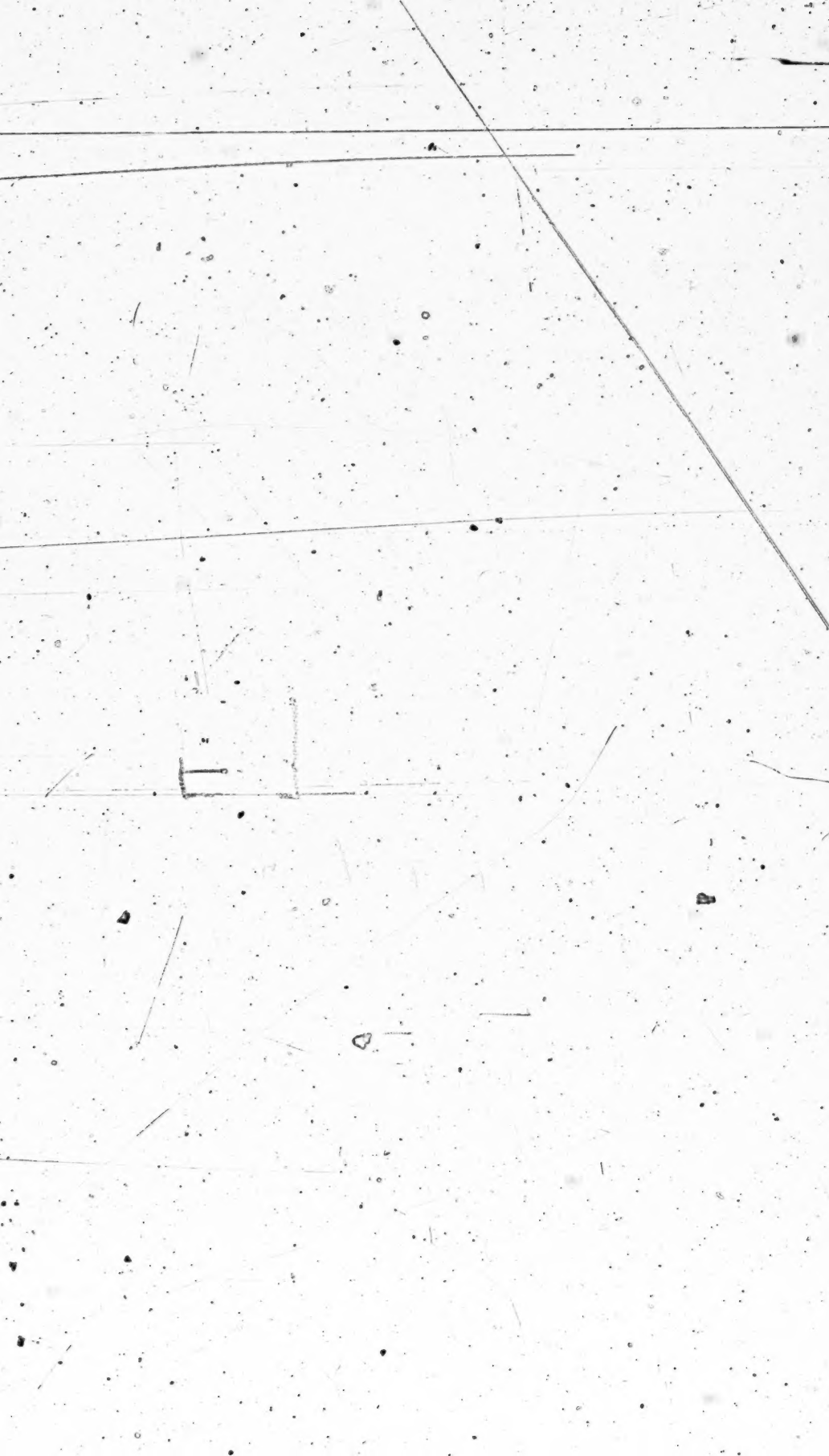
This defendant Townsend did not go to trial. He had been a fugitive and he came in court and plead guilty to four bills of indictment on one of which he was sentenced, and later he plead guilty on two other bills of indictment on which he was given very light sentences to run consecutively to the first sentence of ten to twenty years. The defendant Townsend knew he was guilty of robbery and attempted robbery with others with the use of a weapon, and plead guilty thereto. His only allegation is that if he had had a lawyer he might not have been given as heavy a sentence. The defendant had, however, been arrested a number of times and convicted, and sentenced prior to these last sentences, and was familiar with Court procedure. He does not now claim that he was not guilty.

A writ of habeas corpus is not an appeal and is not to be used to review a conviction. This has been held again and again as decided in *Commonwealth ex rel McGlinn v. Smith*, 344 Pa. 41.

The defendant Townsend has not denied his guilt and therefore his sentence being lawful upon pleas of guilty, we urge that the petition for certiorari be dismissed.

Respectfully submitted,

JOHN H. MAURER,
District Attorney.



Supreme Court of the United States

October Term, 1947. No. 542.

FRANK TOWNSEND,
Petitioner,

vs.

C. J. BURKE, Warden, Eastern State Penitentiary,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

Brief for the Respondent

FRANKLIN E. BARR,
First Assistant District Attorney.
JOHN H. MAURER,
District Attorney of Philadelphia County,
666 City Hall,
Philadelphia, Pa.,
Attorney for Respondent.

Martin & Lyle, 817 Weightman Bldg., Phila. 2, Pa.

INDEX

CASES CITED

ACTS OF ASSEMBLY

APPENDIX

SUPREME COURT OF THE UNITED STATES.

October Term, 1947. No. 542.

FRANK TOWNSEND,
Petitioner,

vs.

C. J. BURKE, Warden, Eastern State Penitentiary,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

BRIEF FOR THE RESPONDENT.

RESPONDENT'S STATEMENT OF THE CASE.

The petitioner was a fugitive. Four (4) co-defendants, Keenan, Cain, Kopitsko and Jankowski, were arrested and signed a joint confession May 18, 1945 stating others were involved, but would not name them. A fifth co-defendant, Foulke, was arrested and signed a confession May 21, 1945 naming Townsend as involved. After, the five (5) co-defendants were held for court by a Magistrate; the District

Statement of the Case

Attorney petitioned the Court of Quarter Sessions to be allowed to indict Townsend as a fugitive. It was granted. The Grand Jury found seven (7) indictments.

The petitioner was arrested June 3, 1945 and June 4, 1945 signed a confession voluntarily.

June 5, 1945, all six (6) defendants were arraigned. Pleas of guilty were made to two (2) robbery indictments and two (2) burglary indictments, and not guilty to one (1) robbery indictment, one (1) burglary indictment and one (1) indictment charging unlawfully carrying a concealed revolver and without a license. Three (3) places were burglarized, and robbery or attempted robbery was committed in each at the point of a gun or guns. All defendants had prior records; the petitioner's one of the longest:—seven (7) prior arrests and five (5) convictions beginning in 1930.

Counsel was not requested, and none assigned since it is only required in cases of murder.

Commonwealth ex rel. *McGlinn v. Smith*, 344 Pa. 41;

Commonwealth ex rel. *Shaw v. Smith*, 147 Pa. Superior 423, overruling *Commonwealth* ex rel. *Schultz v. Smith*, 139 Pa. Superior 357.

The court sentenced the petitioner and his co-defendants after the facts of the two (2) burglary and robbery charges were told and the records of each examined.

The sentence for burglary is a fine not exceeding $10,000.00, and for an indeterminate sentence, not exceeding 10 to 20 years. Act of June 24, 1939, P. L. 872, Sec. 901—18 P. S. 4901.

The sentence for robbery, as described in the indictments, is a fine not exceeding $10,000.00, and for an indeterminate sentence, not exceeding 10 to 20 years. Act of June 24, 1939, P. L. 872, Sec. 705—18 P. S. 4705.

Under these four (4) indictments the defendants could

have been sentenced to two (2) fines not exceeding $10,000.00 each and two (2) indeterminate sentences, not exceeding 10 to 20 years each. One (1) sentence *only* may be imposed for each burglary-robbery.

Townsend, the petitioner, was sentenced to 10 to 20 years.

Cain was sentenced to 10 to 20 years.

Kapitsko was sentenced to 2½ to 5 years, to begin after serving his back parole time (2½ years) without commutation.

Foulke was sentenced to 7½ to 15 years.

Jankowski was sentenced to 7½ to 15 years.

The petitioner does not deny his guilt, does not want a new trial, but asks an absolute discharge because he has partly satisfied his sentence.

There is an appendix attached hereto of the following:

A. Confession of Townsend.

B. Confession of Foulke.

C. Joint Confession of Keenan, Cain, Kopitsko and Jankowski.

D. Petition of District Attorney to indict Townsend as a fugitive.

These papers were not introduced in evidence because of the pleas of guilty.

SUMMARY OF ARGUMENT.

I.

Indictments, Confessions and Pleas.

The petitioner, with three others, was indicted for armed robbery (R. 31) and burglary (R. 43) of Wade Mitchell at

1018 Passyunk Avenue, to which they confessed and plead guilty.

The petitioner, with two others, was indicted for attempted armed robbery (R. 38) of Velma Robley and with four others of burglary (R. 41) at 323 South 23rd Street, where Velma Robley was in charge, to which they confessed and plead guilty.

II.

Who are the defendants?

The petitioner is 29 years old and the other five from 23 years to 30 years. They are all habitual criminals having prior convictions and sentences to prisons.

III.

Due Process of Law.

There is no categorical right to counsel under the 14th Amendment to the Constitution of the United States, the Constitution of the Commonwealth of Pennsylvania or Laws of Pennsylvania, except in murder.

A defendant, who pleads guilty, does not have to be supplied counsel.

More defendants plead guilty than those convicted, either without a jury or by a jury.

To obtain a confession is lawful.

The indictments were understood by the petitioner and his co-defendants. They plead guilty to two (2) robbery-burglary crimes, to which they had confessed, and not guilty to the one (1) robbery-burglary crime, to which they did not confess, and of which they were acquitted.

Argument

The petition for habeas corpus, prepared and filed by the petitioner himself, shows intelligence, resourcefulness and cunning.

ARGUMENT.

I.

Indictments, Confessions and Pleas.

The indictments to which the petitioner plead guilty and was sentenced were drawn under the Act of June 24, 1939, P. L. 872, Sec. 705, 18 P. S. 4705.

> "Whoever, being armed with an offensive weapon or instrument, robs or assaults with intent to rob another; or, together with one or more person or persons, robs or assaults with intent to rob; or robs any person, and at the same time, or immediately before or immediately after such robbery, beats, strikes, or ill-uses any person, or does violence to such person, is guilty of felony, and upon conviction, shall be sentenced to pay a fine not exceeding ten thousand dollars ($10,000.00), or undergo imprisonment, by separate or solitary confinement at labor, not exceeding twenty (20) years, or both,"

and Sec. 901, 18 P. S. 4901:

> "Whoever, at any time, wilfully and maliciously, enters any building, with intent to commit any felony therein, is guilty of burglary, a felony, and upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand dollars ($10,000.00), or to

undergo imprisonment, by separate or solitary confinement at labor, not exceeding twenty (20) years, or both,"

and Sec. 628 C, 18 P. S. 4628C:

"In the trial of a person for committing or attempting to commit a crime of violence, the fact that he was armed with a firearm, used or attempted to be used, and had no license to carry the same, shall be evidence of his intention to commit said crime of violence."

Indictment No. 696 of May sessions 1945 charges the petitioner and Joseph Kopitsko, Edward Keenan and Charles Cain with five (5) counts drawn under Sec. 705 and the sixth (6) count under Sec. 628.

Indictment No. 697 of May sessions 1945 charges the petitioner and Edward Keenan and Orville Foulke with four (4) counts drawn under Sec. 705 and the fifth (5) count under Sec. 628.

Indictment No. 698 of May sessions 1945 charges the petitioner and Edward Keenan and Orville Foulke with four (4) counts drawn under Sec. 705, and the last count under Sec. 628.

Indictment No. 699 of May sessions 1945 charges the petitioner and Edward Keenan, Joseph Kopitsko, Walter Jankowski and Orville Foulke with one (1) count under Sec. 901.

Indictment No. 700 of May sessions 1945 charges the petitioner and Edward Keenan and Orville Foulke with one (1) count under Sec. 901.

Indictment No. 701 of May sessions 1945 charges the petitioner and Joseph Kopitsko, Edward Keenan and Charles Cain with one (1) count under Sec. 901.

The defendants, as charged, plead guilty to indictments Nos. 696, 698, 699 and 701.

Argument

Indictments Nos. 699 and 701 involve Wade Mitchell and the premises 1018 East Passyunk Avenue.

Indictments Nos. 698 and 699 involve Velma Robley and the Yellow Cab Company at 323 South 23rd Street.

The confessions of all defendants (App. A. B. C.), tell of the burglary and robbery and attempted robbery at the garage at 1018 Passyunk Avenue and the Yellow Cab Company, 323 South 23rd Street.

II.

Who are the defendants?

The petitioner is 29 years of age, Foulke 30 years, Kopitsko 23 years, Cain 24 years, Keenan and Jankowski 25 years. All have many arrests, convictions and jail sentences.

These six (6) defendants are habitual criminals. They know legal procedure, know when to ask for counsel and when not to, know which judges are sitting and scheme to pick the judge before whom they will be tried. They know they are warring against society. One of their commonest schemes after sentence is to file petition after petition for writs of habeas corpus reiterating the same reasons in each petition; quoting the decisions of appellate courts, hoping that some court will weaken and let them out to go back to their life of crime and war against society.

III.

Due Process of Law.

Article I, Section 9 of the Constitution of Pennsylvania provides:

"Rights of accused in criminal prosecutions.

Argument

"In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, * * *"

Article VI of the Amendments of the Constitution of the United States provides:

"Rights of accused persons in criminal prosecutions.

"In all criminal prosecutions, the accused * * * shall have * * * the Assistance of Counsel for his defence."

Article XIV of the Amendments of the Constitution of the United States provides:

"Section 1. Citizenship defined. Privileges of Citizens.

"* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *"

Article VI of the Amendments to the Constitution of the United States applies only to trials in federal courts. *Betts v. Brady*, 316 U. S. 455, 461.

That the "Accused should have a right to be heard by himself and by his counsel was adopted by Pa. in 1776 * * *" *Betts v. Brady*, supra 465.

In most states the people, their representatives and courts, do not consider the appointment of counsel a fundamental right essential to a fair trial. *Betts v. Brady*, supra 471.

In Pennsylvania, by Act of Legislature, in murder cases —the only instance carrying the death penalty—counsel must be appointed.

Act of March 22, 1907, P. L. 31—19 P. S. 784.

In crimes other than murder, accused has a right to be heard by counsel, but it has never been the law that he must be supplied with counsel.

Commonwealth ex rel. *McGlinn v. Smith*, 344 Pa. 41.

Argument

McGlinn plead not guilty to charge of armed robbery.

Affirmed Commonwealth ex rel. *Withers v. Ashe*, 350 Pa. 493, 495;
Commonwealth ex rel. *Fitts v. Smith*, 158 Pa. Super. 105.

It has been constantly held that when a defendant pleads guilty the court is not bound to appoint counsel to represent him.

Com. ex rel. Curtis v. Ashe, 139 Pa. Super. 417.
Com. ex rel. Cook v. Ashe, 144 Pa. Super. 1.
Com. ex rel. Billings v. Ashe, 144 Pa. Super. 209, 211.
Com. ex rel. Shaw v. Smith, 147 Pa. Super. 423.
Com. ex rel. Uveges v. Ashe, 161 Pa. Super. 58, 61, 62.

Each relator, in the cited cases, in his petition for discharge on habeas corpus, gave most of the following reasons as taken from these cases.

1. Did not have counsel.

2. Was not represented by counsel.

3. Was not informed of his right to counsel.

4. Trial judge did not ask if he wished counsel or informed him of his right to counsel.

5. Did not waive his constitutional right to be represented by counsel.

The petitioner before you gives as his reasons:

a. "He was not advised of his right to engage counsel."

b. "He was not instructed of the particular offenses covering Bills Nos. 696, 698, 699 and 701, May Sessions 1945."

c. "From the very minute of his arrest to the very minute of the imposition of sentence, at no time was your petitioner instructed to even the simplest and minutest degree of his constitutional rights provided under the 6th and the 14th amendments of the Constitution of the United States" (R. 3).

His reasons are the same as those considered in the cited cases. He does not assert his innocence. He who confesses his guilt prior to indictment and pleads guilty to indictments covering his confession cannot say he has been deprived of his constitutional rights. Could the petitioner truthfully allege innocence there might be reason for considering his petition,

More plead guilty than are convicted by trial.

During 1939-1940 in Pa.

37,221 defendants plead guilty.

10,755 defendants were convicted in cases where a jury trial was waived.

6,104 defendants were convicted by juries. These facts are obtained from the chief of the Census Bureau of the Department of Commerce and cited *Commonwealth* ex rel. *McGlinn v. Smith*, 344 Pa. 41, 51.

Simply because without counsel, the defendant pleads guilty—is no reason to set aside the sentence. If this were so the courts would spend most of their time granting new trials. There must be a real reason.

Commonwealth ex rel. Shaw v. Smith, 147 Pa. Super. 423.

Shaw plead guilty; after sentence he filed a petition for habeas corpus alleging the following reasons:

1. Did not have counsel.

2. Was not informed of his right to counsel.

3. Trial judge did not ask if he wished counsel nor offer to appoint counsel.

4. Did not waive his constitutional right to be represented by counsel.

The Court in its decision said, p. 430:

> "Our courts should not for the reasons offered in this petition turn loose upon society the hundreds of convicts who were sent to prison after *pleading guilty* or being adjudged guilty by a jury, unless the law imperatively requires them to do so, and there is no such requirement."

Right of Police to question accused.

It is argued that defendant was kept in custody, questioned and taken from the scene of one crime to another, which was serious misconduct on the part of the police. If police cannot do so, this means that confessions could never be obtained. To follow petitioner's argument it would mean that society would be the victim of criminal hordes who might never be questioned, who could never make a confession. Such an argument is unrealistic and should have no consideration.

Our courts would not follow any such idea.

Commonwealth ex rel. *Shaw v. Smith,* 147 Pa. Super. 423, 430, supra.

Argument

The complaint that the petitioner did not have a preliminary hearing before a Magistrate is the petitioner's own fault. He was a fugitive. Fugitives not only may be indicted, but must be indicted to toll the Statute of Limitations. All defendants in a particular case should be indicted at the same time. The indictment was properly found and the petitioner because of his flight cannot complain that he did not have a preliminary hearing.

Com. v. Nayduck, 22 Pa. D. & C. 289.
Com. v. Delamater, 13 Pa. C. C. 152.
Com. v. Wilson, 134 Pa. Super. 222.
Com. v. Beerson, 49 Pa. D. & C. 609.
Brown v. Com., 76 Pa. 319, 337.
Com. v. Rothensies, 64 Pa. Super. 395, 416.
McCullough v. Com., 67 Pa. 30.

Alleged Complexity of charges.

The charges against the petitioner and his five (5) co-defendants are quite simple, easily understood, and were understood by the six (6) defendants.

691 charged petitioner alone with carrying a revolver to which he plead not guilty.

696 charged petitioner and others with robbery to which they plead guilty.

697 charged petitioner and others with robbery to which they plead not guilty.

698 charged petitioner and others with robbery to which they plead guilty.

699 charged petitioner and others with burglary to which they plead guilty.

700 charged petitioner and others with burglary to which they plead not guilty.

701 charged petitioner and others with burglary to which they plead guilty.

The petitioner and his co-defendants were able to discriminate as to their pleas.

Bills Nos. 696 and 701 charge Robbery of Wade Mitchell and Burglary of 1018 Passyunk Avenue where Mitchell was night watchman. The defendants had prior to pleading signed confessions admitting these crimes, App. A. & C.

Bills Nos. 698 and 699 charge attempted Robbery of Velma Robley and Burglary of the Yellow Cab Company, 323 South 23rd Street. The defendants had prior to pleading signed confessions admitting these crimes, App. A. B. & C.

Bills Nos. 697 and 700 charge Robbery of Renfroein and Burglary of N. E. corner of 27th and Brown Streets, where Renfroein was caretaker. The defendants did not admit to this except Foulke who said he was outside. They were tried and acquitted on these two bills.

To say that the petitioner did not understand to what he was pleading is most certainly not substantiated by a single fact. To that which he plead Not Guilty he was acquitted. To that which he plead Guilty he does not deny guilt.

His petition for habeas corpus, self prepared and filed, shows intelligence and resourcefulness. He tells of being taken from the scene of one crime to another—the station houses were the police districts where the crimes were committed; he does not tell he confessed; he says he did not have counsel; he does not say he asked for counsel; he says he did not know of his right to employ his own lawyer; he does not claim innocence; he does not ask for a new trial; he does not want a new trial, but he asks to be discharged. He claims had he had counsel he might have gotten a lesser sentence because one of his co-defendants did; he does not tell of the difference between his and that one's criminal records; he does not say what counsel could have said or proved to obtain a lesser sentence. The petition is expressed in well chosen words, is intelligent, resourceful and cunning; the cunning of an habitual criminal.

Death penalty cases not discussed.

We have not discussed those cases cited for the petitioner which involve the death penalty. We dot not believe they have anything to do with this case which is not subject to the death penalty. In Pennsylvania the only crime, murder, subject to death penalty, counsel must be provided by act of legislature, not by Constitutional Provision.

The conclusion of the argument for the petitioner does not claim that counsel must be appointed in all serious criminal cases and does not attack the validity of sentence passed upon pleas of guilty without counsel being offered or requested. It rests the contention on the proposition that the defendant cannot comprehend the charges made and cannot intelligently respond to them. A reading of his confession and of the confessions of his co-partners in crime clearly show that these habitual criminals knew and understood perfectly that they were committing deliberately and carefully planned crimes. In the garage at Passyunk Avenue they had stolen some welding equipment in order to burn the safe. They went there armed. They took the welding equipment with them. They forced the garage attendant away from the office, holding him prisoner at the point of a gun. When the welding equipment did not work, the combination was broken off the safe and they escaped by stealing an automobile from the garage. The holdup of the Yellow Cab Company, where some went by trolley car and the rest in a stolen automobile used for the get away, lining up the cashier and others against the wall, the attempt to break open what they thought was a wooden box, but which turned out to be a safe, shows the carefully planned crime.

The petitioner does not claim that he was subject to the "third degree" or that he is innocent.

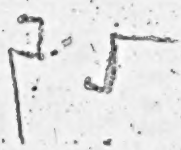
His contention is that since counsel was not supplied to him, he must now, having partly satisfied his sentence, be

set free; that to grant a new trial would be destructive of justice.

He, an habitual criminal for fifteen (15) years prior to this arrest, admits his guilt in two premeditated crimes of robbery and burglary, but asks this Court to set him free. To free this guilty criminal, the court would forget its first duty to protect the citizenry. To free this guilty criminal is notice to the criminal world, that it has won the war against law and order; that courts have bowed to crime rampant.

The judgment of the Supreme Court of Pennsylvania should be affirmed.

FRANKLIN E. BARR,
First Assistant District Attorney.
JOHN H. MAURER,
District Attorney.



APPENDIX "A."

DEPARTMENT OF PUBLIC SAFETY.
BUREAU OF POLICE
PHILA., Pa.

FIRST DETECTIVE DIVISION
15th and Snyder Avenue.

Mon. June 4, 1945 3 P. M.

STATEMENT OF: FRANK SULLIVAN TOWNSEND, W-29 ("Frank)

1732 Wylie Street, Philadelphia, Pa.

Concerning: Crimes mentioned in this statement.

Record: Statement taken at the 1st Detective Division headquarters, 15th St. and Snyder Ave., on Monday, June 4, 1945, at 3 p. m.
Stenographer, Robert Prado, clerk of the 1st Det. Div.

Taken in presence of: Detectives, 1st Detective Division.

1. Hicks #142, E. J.
2. Kelly #198, J. A.
3. Lear #13, L. J.

Interrogation by: Detective Patrick J. Lane, #83, 1st Det. Div.

Appendix "A"

BY DETECTIVE LANE #83:

Q. What is your name, age, and address?

A. Frank Sullivan Townsend. They call me "Frank." I'm twenty-nine. I live at 1732 Wylie Street.

Q. "Frank," we're going to take a statement from you, which you understand, you are making of your own free will. No threats or promises are being made to you to get you to make this statement; and you are being warned that anything you say concerning you yourself in this statement maybe used as evidence against you at the time of your trial in court. Do you understand that, and are you willing to make a statement.

A. Yes, sir.

Q. On March 18, 1945, between one and six o'clock in the morning, a taproom at 5019 North Broad St. owned by a Eugene Mahlneister, was broken into. Do you know anything about that.

A. Yes. Well the three of us went in there: me, "Klik" —Joseph Kopitsko—, and Eddie Keenan. We broke a window and entered the place. We got there on the subway and got off at Logan Station. We pulled down the top window, which wasn't locked. And we opened the side door. We looked around and went in the office and saw a safe. We figured all the money was in there. We didn't touch nothing, but went out and closed the door and the window and got a car and took the safe out to a lot at 24th and Fairmount and took the screws out of the safe. We got $1150 cash. We also got three revolvers out of the place. I have one. And the other two I threw in the Schuylkill River, at the Dam, Spring Garden Bridge.

FIRST DETECTIVE DIVISION
15th St. and Snyder Ave.
Phila., Pa.

Appendix "A"

STATEMENT OF FRANK S. TOWNSEND, 6-4-45, 3 P. M.

Q. Did you take anything else there.

A. And about four cartons of cigarettes and two cases of whiskey, assorted brands. Also three Coast Guard shirts. I'm now wearing one of them.

Q. Now, on the night of March 23, 1945, there was a truck loaded with welding equipment that was stolen from a garage, 1627 Brandywine Street. What do you know about that.

A. The first I seen that truck was down at the garage, 1018 Passyunk Avenue. We had planned to meet. I met Kopitsko and Keenan and Cain. I stayed outside. The others went inside the garage. They pulled the truck inside the big doors and closed the big doors. Then I took the burning equipment off the truck. I was going to burn the safe. But I couldn't make the equipment work. Then I knocked the combination off the safe. When I seen that I couldn't make use of the burning equipment, and we saw there was no use hanging around there, we picked a car out of the garage and went out the Eighth Street side of the building. And we later abandoned it on Ninth Street, around Lombard.

Q. On April 29, 1945, around 11.45 p. m. the Yellow Cab Co. office and garage, 323 S. 23rd St. was held up at a point of gun. Do you know anything about that.

A. Yes. I was there. On that job there was me, and Keenan, and Kopitsko, and "Wash"—Jankowski, and Reds. We went down to the garage on a trolley. Me and Reds and Jankowski waited in the square, 23rd and Pine, for Kopitsko

and Keenan, who went down and got an automobile from a public garage, 6th and Reed. Then I got in the car with the rest of them and drove into the garage. There was a colored girl in the office, and there was a colored mechanic, and one cab driver. We got them all together and put them in the office. We saw what looked like a wooden box and we tried to break it open, but we found out it was an iron safe. We gave up, and didn't get anything out of there.

Q. Are there any other jobs you were on that you want to tell us about at this time.

A. That's all. I was on a job at 24th and Fairmount, for which I have been indicted.

Q. Is what you have said in this statement, the truth.

A. Yes, sir.

(SIGNED) Frank Townsend
1732 Wylie Street

WITNESS
(SIGNED) Patrick J. Lane #83.

APPENDIX "B."

DEPARTMENT OF PUBLIC SAFETY.
BUREAU OF POLICE
Philadelphia.

Detective Division
15th & Snyder Ave.

May 21, 1945, 5 P. M.

STATEMENT OF: ORVILLE FOULKE (nickname "Reds")
White, 30, residence 2222 Aspen St., Phila., Pa.

Concerning: Crimes mentioned in this statement.

Appendix "B"

Record: Statement taken at the 1st Detective Division headquarters, 15th St. and Snyder Ave., Phila., Pa. on Monday, May 21, 1945, at 5 p. m. Stenographer, Robert Prado, clerk of the 1st Detective Division.

Taken in the presence of: Detectives Louis J. Lear #13, Edward J. Hicks, #140; James A. Kelly, #198, of the First Detective Division.

Interrogation by: Detective Patrick J. Lane, #83, 1st Detective Division.

BY DETECTIVE LANE #83:

Q. What is your name, age, and address?

A. Orville Foulke. They call me "Reds." I'm thirty. I live at 2222 Aspen Street.

Q. "Reds," we're going to take a statement from you, which you are making of your own free will. No threats or promises are being made to you to get you to make this statement; and you are being warned that anything you say in this statement concerning you yourself, may be used as evidence against you at the time of your trial in court. Do you understand that, and if so, are you willing to make a statement?

A. Yes, sir.

FIRST DETECTIVE DIVISION
15th St. and Snyder Ave.
Philadelphia, Pa.

STATEMENT OF ORVILLE FOULKE, 5-21-45, 5 p. m.

Q. Now, on April 29, 1945, about 11.45 P. M. the Yellow Cab Company office and garage located at 323 S. 23rd St.,

was held up at the point of gun and attempted safe robbery was made. What do you know about that job?

A. Only that I was on it.

Q. Who else was with you on that job.

A. There was a few guys with me. I was half drunked up. There was five of us; me, Jankowski, Kopitsko, Keenan, and Townsend. I was standing at the door of the office to keep the three people covered. I didn't have a revolver. I didn't have nothing.

Q. Where did you all meet before you went out to the Yellow Cab place?

A. The other four met me at the corner of 16th and Fairmount Avenue, in an automobile. We went from there to the Yellow Cab Garage, 23rd and Pine. When we got there, I was at the office to cover the three employees; that is, to watch them. They were in the office.

Q. I am showing you this picture (Misc. 7.049 5-18-45 Bur. Police Phila. Pa.) who are these men?

A. That's Jankowski, Kopitsko, Keenan, and Cain.

Q. Are they the four others?

A. Jankowski, Kopitsko, and Keenan are three of the four that were with me at the Yellow Cab place, 23rd and Pine. The other, Cain, wasn't. The fourth one on that was Townsend: Frankie.

Q. Well, did you get anything out of that Yellow Cab place?

A. No. And I just stood outside the door to watch the three employees. The others tried to open the safe, but couldn't. So we left in the same car that we came in.

Q. No, on March 29, 1945, 11.10 p. m., there was a garage at the north-east corner of 27th and Brown where the attendant was held up at point of gun and an automobile stolen. Were you in on that?

A. Yes. Keenan and Townsend were with me.

Q. How many of you had revolvers?

A. All of us.

Q. Was the attendant robbed?

A. Most likely he was. I was outside the door and the other two came out with an automobile.

Q. Did you know that the attendant had been held up and robbed?

A. Not till after the other two came out.

Q. Is this all, and is what you've said here, the truth.

A. Yes, sir.

(SIGNED) Orville Foulke
(RES) 2222 Aspen St.

WITNESSES
(SIGNED) Patrick J. Lane #83.

APPENDIX "C."

DEPARTMENT OF PUBLIC SAFETY.
BUREAU OF POLICE
PHILA., PENNA.

FIRST DETECTIVE DIVISION
15th and Snyder Avenue

3.00 P. M., May 18, 1945 (Friday)

JOINT STATEMENT OF:
(1) EDWARD KEENAN, W-25, 1622 Carlton Street;
(2) CHARLES CAIN, W-24, 1732 Wylie Street;
(3) JOSEPH KOPITSKO, W-23, 311 Tasker Street;
(4) WALTER JANKOWSKI, W-25, 1607 Mt. Vernon St.

Concerning: (Crimes mentioned in this statement).

Record: Statement taken at the First Detective Division Headquarters, 15th St. and Snyder Ave., Phila., Pa., on Friday, May 18, 1945, at 3.00 P. M. Stenographer, Robert Prado, clerk of the First Detective Division.

Appendix "C"

Interrogation By: Detective Patrick J. Lane, No. 83, of the First Detective Division.

TAKEN IN THE PRESENCE OF:

1—Detective Edward J. Hicks, No. 142, 1st Det. Div.
2—Detective Louis J. Lear, No. 13, 1st Det. Div.
3—Detective James A. Kelly, No. 198, 1st Det. Div.

BY DETECTIVE LANE, No. 83:

Q. What are your names, ages, and residence addresses?
A. Edward Keenan, twenty-five, 1622 Carlton Street.
A. Charles Cain, twenty-four, 1732 Wylie Street.
A. Joseph Kopitsko, twenty-three, 311 Tasker Street.
A. Walter Jankowski, twenty-five, 1607 Mount Vernon Street.

Q. We're going to take a statement from you, which you are making of your own free will. No threats or promises are being made to you to get you to make this statement; and you are being warned that anything you say in this statement concerning you yourselves, may be used as evidence against you at the time of your trial in court. Do you understand that, and if so, are you willing to make a statement?

A. (by each) Yes.

FIRST DETECTIVE DIVISION
15th St. and Snyder Ave.,
Philadelphia, Pa.

JOINT STATEMENT OF EDWARD KEENAN, et al., 5-18-45—3.00 P. M.

Q. Now, one of you start it off. On March 18, 1945, between 1 A. M. and 6.00 A. M. a taproom was broken into

at 5019 North Broad Street, owned by one Eugene Mahlemeister, who resides at 1429 W. Cayuga Street, so we can start with that job.

A. (By Cain) I wasn't in on that job.

A. (By Keenan) Me and Joe Kopitsko done that job.

Q. How did you get in there, and what did you do when you got in there ?

A. (By Keenan) We—that is, me and Joe Kopitsko—that night, took the subway at Broad and Fairmount Avenue and rode up to Logan Station and, with another fellow—I don't want to mention his name—we pulled the top of the window down. The bottom was locked. The top wasn't. We got in there and we looked around for money. So we found a little office where everything was at. So we took the safe out of the building. We left and I got a machine. I took it without the owner's permission. He's more or less a friend of mine. He didn't know I took it. So we came back and got the safe and took it down to the lot 24th and Fairmount. And we took the screws out of the back and opened the safe. We got about $1150 and that was in the safe, in cash. We also took out of there, two revolvers, and an antique revolver, which we threw away in the Schuylkill River. We also took some coast guard shirts—three of them.

Q. What did you do with the revolvers you got there?

A. (By Keenan) That's the ones we were using.

Q. Showing you this revolver.

Is this one that was stolen there?

A. (By Kopitsko) Yes.

Q. What became of the other revolvers?

A. (By Keenan) We threw the antique in the river, and the other one, I ain't got it.

Q. Did you take any liquor out of there?

A. (By Keenan) Three bottles, for our own use.

Q. You're sure you didn't take any more liquor than just those three bottles?

A. (By Keenan) That's right.

Q. On the night of March 23, there was an automobile stolen from a garage, 1627 Brandywine Street, owned by Morris Coyle. Who know anything about that?

A. (By Kopitsko) I got the truck out.

Q. How did you get in there?

A. (By Kopitsko) Broke a panel in the large door.

Q. Who was with you on that job?

A. (Kopitsko) Nobody was with me when I got the truck. It contained commercial welding equipment. Well, there was another fellow with me, but I don't care to mention his name.

Q. Well, what did you do?

A. (By Kopitsko) We drove down with the truck to the garage on 6th Street (1018 E. Passyunk Ave., owned by Joseph Rizzo). That's all for me.

A. (By Keenan) Pre-arranged, I met Joe Kopitsko and Charlie.

A. (By Cain) We walked up to the door, Eddie Keenan and I. We both had guns. Eddie had one, and I had one. The door was locked. I knocked on the door. The colored fellow came to the door. We asked him could we use his toilet. We walked in and pulled the guns on him—the both of us. We marched him to the back of the garage and put him in a car. I stayed in the rear of the garage, watching him.

A. (By Keenan) Then I let them come in with the truck. The garage door was open. Then Joe Kopitsko drove the welding truck in. And I closed the door. Then the equipment we had was no good to us. We couldn't get the torch lit as the air valve locked. I was going to try to burn into the safe which was in the front office. So we found a small sledge there. We tried to drive a pin through but that wasn't no good, either. So we left.

Q. When you failed to enter the safe, what did you do then?

A. (By Keenan) So we got the Buick Sedan, 1941 model, 2 ton, black body, gray top, Pa. Lic. C-4757. We went out

on the 8th St. side of the garage. All of us got in the car. Me and Charlie and Joe we went a couple of blocks, just far enough to get out of there. We parked it on 9th Street around Lombard Street. We left the colored man in the car.

Q. On April 29, 1945, 11.45 P. M. the Yellow Cab Office and garage located at 323 S. 23rd St. was held up at the point of gun, and attempt robbery of a safe there, was made. Who knows anything about that job?

A. (By Keenan) That's his, too (indicating Walter Jankowski). That was us three,—me, Joe Kopitsko, and Walter Jankowski. And some others, too. I don't want to mention their names. They were in on that, too. We met near the garage. That wasn't pre-arranged; it was a "beat up" affair: it came up just on the spur of the moment. We went to the garage, 6th and Reed. So we pushed a car out of there. We got into it and we shot into the Yellow Cab place. By the way, that a public garage, 6th and Reed. I was driving. I drove to the Yellow Cab Garage, 23rd and Pine. All of us drove in. There was a cab driver there. So we took over. Joe Kopitsko and Walter Jankowski had a gun. There was only one girl in the office, a colored girl. So we told them to all go in the office.

KOPITSKO: We told them to stand up against the wall. Something like that.

A. (Continued by Keenan) So me and Jankowski was in the back office. It looked like a wooden box. There's a big sledge there. I picked it up and hit the safe. But it didn't budge the safe. It's a safe with a wooden casing on it. I said "Fuck this, I'm going to see what it looks like on the other side." I walked around and seen that big old thing. And I said, "Come on, Frank, we're wasting our time." So that's all. We didn't break no combination or nothing.

Q. On the night of May 10, 1945, a taproom was broken into and burglarized at 1500 Callowhill Street. Who know anything about that?

A. (By Keenan) Me and Charlie Cain done that. My wife lives down that way I was going down that way. Me and Charlie had been drinking. We were drunk, so I stuck my foot through the window and reached in and turned the knob. So the other door was locked, too. I stuck my foot in, too. I got my foot cut. When I got near the bar, the burglar alarm went off. I grabbed four bottles of liquor. One had this much (indicating); the most had about this much (indicating). It was on the bar. So that's all we took.

Q. What about the job that was committed in Whitemarsh?

A. (By Keenan) We started out from 16th and Fairmount. Right around the corner there's a garage. That's on 16th Street, right off Fairmount Ave. We pushed a car out of there, and started out. I got in the car, and Charlie Cain, and somebody else. I don't want to mention the name. And we drove up to Whitemarsh. We entered through the back window. I guess we got about two cases of whiskey. That's all we took.

Q. Is there anything else you boys have to say, now?

A. (By each) No.

Q. Is everything you've said here, the truth?

A. (By each) Yes.

SIGNED Edw. J. Keenan
RES. 1622 Carlton Street
SIGNED Charles A. Cain
RES. 1732 Wylie Street
SIGNED Joseph Kopitsko
RES. 311 Tasker Street
SIGNED Walter Jankowski
RES. 1607 Mt. Vernon St.

WITNESSES:
Det. Edward J. Hicks, No. 142.
Det. Patrick J. Lane, No. 83.
Det. James A. Kelly, No. 198.
Det. Louis Lear, No. 13.

APPENDIX "D."

PETITION FOR LEAVE TO INDICT FUGITIVE.

IN THE
COURT OF QUARTER SESSIONS OF THE PEACE.
FOR THE COUNTY OF PHILADELPHIA.

MAY SESSIONS, 1945.

COMMONWEALTH OF PENNSYLVANIA, vs. FRANK TOWNSEND, Fugitive.	Sur Charge of: Burglary with Intent to Rob. Attempted Robbery, While Armed with Others. Burglary. Receiving Stolen Goods.

In re application of the District Attorney of the County of Philadelphia, for leave to prefer bill of indictment to the Grand Jury against the above named defendant, fugitive from justice, upon the facts contained and set forth in the following affidavit: together with one Edward Keenan, Joseph Kopitsko, Walter Jankowski, Orville Foulke and Charles Cain.

State of Pennsylvania
City and County of Philadelphia } ss.

Patrick Lane, being duly sworn according to law doth depose and say, That he is a detective of the Department of Public Safety of said City of Philadelphia and that the facts hereinafter set forth are true and correct, from infor-

mation received by and investigation made by him and to the best of his knowledge and belief.

Deponent avers that Frank Townsend, above named, together with one Joseph Kopitsko, Edward Keenan and Charles Cain, on the 24th day of March, A. D. 1945, with force and arms, did feloniously and burglariously enter the garage of one Joseph Rizzo with intent to commit a felony, and then and there feloniously and violently to rob, seize, steal, take and carry away certain of the property in the presence and against the will of one Wade Mitchell therein then being found; and then and there, did feloniously and violently make an assault upon said Wade Mitchell therein then being found, and him in bodily fear and danger of his life then and there feloniously to put, and in the presence and against the will of said Wade Mitchell, the sum of $3,000.00 did unlawfully attempt to feloniously rob, seize, steal, take and carry away; and a Buick sedan automobile, of the value of $1700.00, did feloniously and violently rob, seize, steal, take and carry away.

Deponent further avers that Frank Townsend, above named, together with one Edward Keenan and Orville Foulke, on the 30th day of March, A. D. 1945, at the County aforesaid, did feloniously and burglariously enter the certain garage of one Benjamin Wang with intent to commit a felony, to wit, with an intent to make an assault upon one James Renfroein therein then being found, and the said James Renfroein in bodily fear and danger of his life to put from the person and in the presence and against the will of said James Renfroein certain moneys and property of and belonging to said James Renfroein, feloniously and violently to rob, seize, steal, take and carry away, and then and there, in the presence and against the will of said James Renfroein, a certain Buick sedan automobile, of the value of $1500.00 and from the person and against the will of said James Renfroein, one wallet and the sum of five dollars, in lawful money of the United States, of the property of said James Renfroein, did then and there feloniously and violently rob, seize, steal, take and carry away.

Appendix "D"

Deponent further avers that Frank Townsend, above named, together with one Edward Keenan, Joseph Kopitsko, Walter Jankowski and Orville Foulke, with force and arms, etc., and in the County aforesaid, on the 29th day of April, A. D. 1945, did feloniously and burglariously enter the garage of a certain body corporate named and called the Yellow Cab Company with intent to commit a felony, to wit, with intent to make an assault upon one Velma Mobley therein then being found, and said Velma Mobley in bodily fear and danger of her life to unlawfully put, and then and there in the presence and against the will of the said Velma Mobley, the sum of $3000.00, in lawful money of the United States, of the property of said corporation named The Yellow Cab Company, to feloniously and violently rob, seize, steal, take and carry away.

Deponent further avers that immediately after the commission of said felonies and robberies, to wit, on or about the eighteenth day of May, A. D. 1945, the said Frank Townsend fled from the City and County of Philadelphia and Commonwealth of Pennsylvania, and is now concealing himself from arrest, and that ever since said flight he has been and is now such a fugitive.

Deponent further avers that he procured a warrant for the arrest of the said Frank Townsend for the commission of said felonies and robberies hereinabove set forth to be issued by Magistrate John J. O'Malley of the City of Philadelphia, on the 1st day of June, A. D. 1945, which warrant has not been served and executed because of said flight of said Frank Townsend as aforesaid; and further deponent saith not.

DET. PATRICK J. LANE, No. 83.

Sworn to and subscribed before me this 1st day of June, A. D. 1945.

JAMES DOUGHERTY,
Notary Public.

My Commission Expires March 15, 1947.

Appendix "D"

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

And now, June 1, 1945, John H. Maurer, District Attorney of the County of Philadelphia, on behalf of the said Commonwealth, asks that leave of the Court be granted him to prefer a bill of indictment against the above-named fugitive, to the Grand Jury charging said fugitive with the offences set forth in the foregoing affidavit.

JOHN H. MAURER,
District Attorney.

COURT OF QUARTER SESSIONS

MAY SESSIONS, 1945.

COMMONWEALTH vs. FRANK TOWNSEND, Fugitive.	Sur Charge of: Burglary. Receiving Stolen Goods. Burglary with Intent to Rob. Robbery, While Armed, Together with Other Persons. Violation of Uniform Firearm Act.

AND NOW, June 1, 1945, upon consideration of the within affidavit and of the application and request of the District Attorney, leave is hereby granted to prefer to the Grand Jury bill of indictment against the above named fugitive, charging said fugitive with the within described offence, together with one Edward Keenan, Orville Foulke, Joseph Kopitsko, Walter Jankowski and Charles Cain.

FLOOD,
Judge.

SUPREME COURT OF THE UNITED STATES

No. 542.—October Term, 1947.

Frank Townsend, Petitioner, v. C. J. Burke, Warden, Eastern State Penitentiary.	On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

[June 14, 1948.]

Mr. Justice Jackson delivered the opinion of the Court.

The Commonwealth of Pennsylvania holds petitioner prisoner under two indeterminate sentences, not exceeding 10 to 20 years, upon a plea of guilty to burglary and robbery. On review here of the State Supreme Court's denial of *habeas corpus*,[1] the prisoner demands a discharge by this Court on federal constitutional grounds.

Petitioner, while a fugitive, was indicted on June 1, 1945, for burglary and armed robbery. Four of his alleged accomplices had been arrested on May 18, 1945, and signed a joint confession, while a fifth had been arrested on May 21, 1945, and had also confessed. Petitioner was arrested on June 3, 1945, and confessed on June 4. On June 5, after pleading guilty to two charges of robbery and two charges of burglary and not guilty to other charges, he was sentenced.

Petitioner now alleges violation of his constitutional rights in that, except for a ten-minute conversation with his wife, he was held incommunicado for a period of 40

[1] Respondent raised no procedural or jurisdictional issues in this Court or in the State Supreme Court. Since petitioner has throughout based his claim for relief solely on alleged deprivation of federal constitutional rights, we assume that those questions were considered by the Supreme Court of Pennsylvania and are therefore open here. *Herndon* v. *Lowry*, 301 U. S. 242, 247.

hours between his arrest and his plea of guilty. He does not allege that he was beaten, misused, threatened or intimidated, but only that he was held for that period and was several times interrogated. He does not allege that the questioning was continuous or that it had any coercive effect.

The plea for relief because he was detained, as he claims, unlawfully is based on *McNabb* v. *United States*, 318 U. S. 332. But the rule there applied was one against use of confessions obtained during illegal detention and it was limited to federal courts, to which it was applied by virtue of our supervisory power. In this present case no confession was used because the plea of guilty in open court dispensed with proof of the crime. Hence, lawfulness of the detention is not a factor in determining admissibility of any confession and if he were temporarily detained illegally, it would have no bearing on the validity of his present confinement based on his plea of guilty, particularly since he makes no allegation that it induced the plea.

Petitioner also relies on *Haley* v. *Ohio*, 332 U. S. 596, in which this Court reversed a state court murder conviction because it was believed to have been based on a confession wrung from an uncounseled 15-year-old boy held incommunicado during questioning by relays of police for several hours late at night. Even aside from the differing facts, that case provides no precedent for relief to this prisoner since, as has been said, no confession was used against him, and he does not allege that his pleas of guilty resulted from his allegedly illegal detention.

Petitioner also says that when he was brought into court to plead, he was not represented by counsel, offered assignment of counsel, advised of his right to counsel or instructed with particularity as to the nature of the crimes with which he was charged. This, he says, under the circumstances deprived his conviction and sentence

of constitutional validity by reason of the due process clause of the Fourteenth Amendment.[2]

Only recently a majority of this Court reaffirmed that the due process clause of the Fourteenth Amendment does not prohibit a State from accepting a plea of guilty in a non-capital case from an uncounseled defendant. *Bute* v. *Illinois*, 333 U. S. 640. In that, and in earlier cases, we have indicated, however, that the disadvantage from absence of counsel, when aggravated by circumstances showing that it resulted in the prisoner actually being taken advantage of, or prejudiced, does make out a case of violation of due process.

The proceedings as to this petitioner, following his plea of guilty, consisted of a recital by an officer of details of the crimes to which petitioner and others had pleaded guilty and of the following action by the court: [Italics supplied].

"By the Court (addressing Townsend):

"Q. Townsend, how old are you?

"A. 29.

"Q. You have been here before, haven't you?

"A. Yes, sir.

"Q. *1933, larceny of automobile.* 1934, larceny of produce. 1930, larceny of bicycle. 1931, entering to steal and larceny. *1938, entering to steal and larceny in Doylestown.* Were you tried up there? No, no. Arrested in Doylestown. That was up on Ger-

---

[2] The Supreme Court of Pennsylvania has frequently held that the state constitutional provision according defendants the right to be heard by counsel does not require appointment of counsel in non-capital cases. See, for example, *Commonwealth ex rel. McGlinn* v. *Smith*, 344 Pa. 46; *Commonwealth ex rel. Withers* v. *Ashe*, 350 Pa. 493. See also *Betts* v. *Brady*, 316 U. S. 455, 465. The Pennsylvania statutes require only that destitute defendants accused of murder shall be assigned counsel. Act of March 22, 1907, 19 Pa. Stat. Ann. § 784.

mantown Avenue, wasn't it? You robbed a paint store.

"A. No. That was my brother.

"Q. You were tried for it, weren't you?

"A. Yes, but I was not guilty.

"Q. And 1945, this. 1936, entering to steal and larceny, 1350 Ridge Avenue. Is that your brother too?

"A. No.

"Q. *1937, receiving stolen goods, a saxophone.* What did you want with a saxophone? Didn't hope to play in the prison band then, did you?

"The Court: Ten to twenty in the Penitentiary."

The trial court's facetiousness casts a somewhat somber reflection on the fairness of the proceeding when we learn from the record that actually the charge of receiving the stolen saxophone had been dismissed and the prisoner discharged by the magistrate. But it savors of foul play or of carelessness when we find from the record that, on two other of the charges which the court recited against the defendant, he had also been found not guilty. Both the 1933 charge of larceny of an automobile, and the 1938 charge of entry to steal and larceny, resulted in his discharge after he was adjudged not guilty. We are not at liberty to assume that items given such emphasis by the sentencing court, did not influence the sentence which the prisoner is now serving.

We believe that on the record before us, it is evident that this uncounseled defendant was either overreached by the prosecution's s[illegible]mission of misinformation to the court or was prejudiced by the court's own misreading of the record. Counsel, had any been present, would have been under a duty to prevent the court from proceeding on such false assumptions and perhaps under a duty to seek remedy elsewhere if they persisted. Consequently, on this record we conclude that, while disadvantaged by

lack of counsel, this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue. Such a result, whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand.

We would make clear that we are not reaching this result because of petitioner's allegation that his sentence was unduly severe. The sentence being within the limits set by the statute, its severity would not be grounds for relief here even on direct review of the conviction, much less on review of the state court's denial of *habeas corpus*. It is not the duration or severity of this sentence that renders it constitutionally invalid; it is the careless or designed pronouncement of sentence on a foundation so extensively and materially false, which the prisoner had no opportunity to correct by the services which counsel would provide, that renders the proceedings lacking in due process.

Nor do we mean that mere error in resolving a question of fact on a plea of guilty by an uncounseled defendant in a non-capital case would necessarily indicate a want of due process of law. Fair prosecutors and conscientious judges sometimes are misinformed or draw inferences from conflicting evidence with which we would not agree. But even an erroneous judgment, based on a scrupulous and diligent search for truth, may be due process of law.

In this case, counsel might not have changed the sentence, but he could have taken steps to see that the conviction and sentence were not predicated on misinformation or misreading of court records, a requirement of fair play which absence of counsel withheld from this prisoner.

Reversed.

THE CHIEF JUSTICE, MR. JUSTICE REED, and MR. JUSTICE BURTON, dissent.